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U.S. HOUSE OF REPRESENTATIVES

WRITTEN COMMENTS

ON

MISCELLANEOUS TRADE PROPOSALS

JANUARY 7, 1997

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ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
January 31, 1996
No. TR-17

CONTACT: (202) 225-6649

Crane Announces Request for Written Comments on Miscellaneous Trade Proposals

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee is requesting written comments for the record from all parties interested in the attached miscellaneous trade proposals. These proposals originated either as bills introduced by Members of the House or as initiatives of the Administration. Chairman Crane and the Subcommittee would like to know the views of all parties with an interest in these proposals.

MISCELLANEOUS TRADE PROPOSALS

Tariff Act of 1930

1. Provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year if it determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate (H.R. 2822).

2. Limit the definition of "domestic industry" and "like product" in certain safeguard actions involving perishable agricultural products to products produced during a particular growing season if all or almost all of the production of the article is sold during that growing season and the demand for the article is not supplied, to any substantial degree, by producers of the article in a different growing season (H.R. 2795).

3. Retitle Section 313(w) of the Tariff Act of 1930 (19 U.S.C. 1313(w)) as "Limited applicability for certain products" and add paragraph (1) "Agricultural Products." Current paragraphs (1) and (2) are redesignated subparagraphs (a) "In general," and (b) "Application to tobacco." Insert paragraph (w)(2) "Carpet and Rug Products," to provide a substitution drawback for the base materials actually used in the production of tufted carpets and other tufted textile floor coverings (HTS 5703) whether in a duty-paid, duty-free, or domestic merchandise category if: imported, duty-paid merchandise under HTS 5402, 5404, or 5406 is substituted on a nylon-for-nylon, polyester-for-polyester, and polypropylene-for-polypropylene basis regardless of the base chemical composition of the merchandise; or imported duty-paid merchandise is classified under 5501, 5503, 5505, 5506, and 5509 (H.R. 2872).

4. Amend Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) to require that door hinges and parts thereof be marked on the exposed surface of the installed hinge when viewed, with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or by permanent stenciling of packages for smaller hinges (H.R. 2426).

5. Amend Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) by inserting a subsection which exempts from marking electronic components under HTS 8541 (diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezoelectric crystals; parts thereof) and HTS 8542 (electronic integrated circuits and microassemblies), and their containers from country of origin marking requirements (H.R. 947).

(MORE)

Harmonized Tariff Schedule

1. Amend HTS 2922 (oxygen-function amino-compounds, amino-acids and their esters, other than those containing more than one kind of oxygen function; salts thereof) by inserting after "acid" in subheading 2922.49.05 the following: "; 2-Amino-3 chlorbenzoic acid, methyl ester" (H.R. 2889).

2. Amend General Note 6, "Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft," to read: Whenever a product is entered under a provision for which the rate of duty "Free (C)" appears in the "Special" subcolumn, the importer shall maintain such supporting documentation as the Secretary of the Treasury may require; and, shall be deemed to certify that the imported article is a civil aircraft, or has been imported for use as a civil aircraft and will be so used. The importer may amend the entry or file a written statement to claim a free rate of duty at any time before the liquidation of the entry becomes final. For purposes of the tariff schedule, the term "civil aircraft" means any aircraft that is manufactured or operated pursuant to any certificate issued by the Administrator of the FAA under 49 U.S.C. 44704, or pursuant to the approval of the airworthiness authority in the country of exportation, if such approval is recognized by the FAA as an acceptable substitute for such an FAA certificate. 'Civil aircraft' may also mean any aircraft for which an application for such a certificate has been submitted to, and accepted by, the Administrator of the FAA; and any other aircraft purchased for use by the Department of Defense or the United States Coast Guard (H.R. 1712).

3. Amend Chapter 99, Subchapter II of the HTS by inserting a new heading 9902.30.16 for Methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate (dichlorofopmethyl) in bulk or in forms or packages for retail sale (CAS No. 51338-27-3) provided for in subheading 2918.90.20 or 3808.30.15 as temporarily duty free (H.R. 2615).

4. Amend HTS 3604 (Fireworks, signaling flares, rain rockets, fog signals and other pyrotechnic articles) to distinguish HTS 3604.10.10..00 (Class 1.3G (Class B)) and provide a tariff of 2.4%. During the Uruguay Round negotiations, chemicals between Chapters 28 and 38 were converted to *ad valorum* duties. The duty on fireworks was converted from 11 cents per kilogram to 5.3% *ad valorem*, an increase of over 80%. A tariff of 2.4% *ad valorem* restores the *status quo ante* (H.R. 2895).

5. Amend HTS 8532 to distinguish power capacitors (HTS 8532.10.00), aluminum electrolytic (HTS 8532.22.00), and dialetric of paper or plastics (HTS 8532.25.00), fixed electrical capacitors, and provide a zero tariff if entered on or before December 31, 1997 (H.R. 2358).

6. Provide for the reliquidation, at a rate of duty of 3.7% ad valorem, of three entries of Perkadox 16 and all variations thereof as provided under HTS 2920.90.50 made between October 31, 1991 and March 9, 1992, and refund any excess duties paid with respect to these entries (H.R. 2537).

7. Provide for the duty-free entry of 3,3'-diaminobensidine (Tetraamino Biphenyl) and authorize corresponding changes to Schedule XX, Section 2(5) of the Uruguay Round Agreements Act (19 U.S.C. 3501(5)). Provide for the liquidation or reliquidation of relevant entries of Tetraamino Biphenyl made on or after January 1, 1995, and refund any duties paid on such entry (H.R. 2870).

8. Amend Chapter 99, Subchapter II of the HTS by inserting a new heading 9902.30.16 for N-phenyl-n'-(1,2,3-thiadiazol-5'yl urea (thidiazuron) in bulk or in forms or packages for retail sale (CAS No. 51707-55-2)(provided for in subheading 2934.90.15 or 3808.30.15) as temporarily duty free (H.R. 2616).

9. Amend the HTS by striking subheading 5607.50.20 and inserting a subheading 5607.50.25 for three-ply twine of nylon having a final "S" twist; measuring less than 4.8 mm in diameter; containing at least 10% cotton; made of 100% recycled materials, with a duty rate of 7.9% (H.R. 1543).

(MORE)

10. Amends Subchapter II of Chapter 99 of the HTS by inserting a new subheading 9902.56.07 to provide a temporary duty suspension for three-ply twine of nylon having a final "S" twist; measuring less than 4.8 mm in diameter; containing at least 10% cotton; made of 100% recycled materials (provided for in subheading 5607.50.20) (H.R. 1935).

North American Free Trade Agreement

Provide for the liquidation or reliquidation of certain footwear under HTS 9905.64.10, as follows: entries made after December 31, 1988, and before January 1, 1990, at 4.7% *ad valorem*; entries made after December 31, 1989, and before January 1, 1991, at 4.2% *ad valorem*; and, entries made after December 31, 1990, and before July 1, 1991, at 3.7% *ad valorem* (H.R. 2890).

Customs Procedural Reform and Simplification Act of 1978

The Administration has asked for legislation to amend Section 301 of Title III of the Customs Procedural Reform and Simplification Act of 1978, as amended (19 U.S.C. 2075) by adding a paragraph (h) to allow that appropriations available to the U.S. Customs Service may be used for contracting with individuals for personal services abroad, so long as such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

United States Enrichment Corporation Privatization Act; Title VII of the Tariff Act of 1930, as amended

The Administration has requested legislation, as part of the implementation of a government-to-government agreement between the United States and Russia providing for the purchase of uranium extracted from former Soviet nuclear weapons, that would provide the President with the authority, if he determines it to be in the national security interest of the United States, to waive the applicability of Title VII of the Tariff Act of 1930 to the importation of certain uranium from the Russian Federation, as follows:

SEC.___ PRESIDENTIAL WAIVER IN THE INTEREST OF NATIONAL SECURITY

(a) In the case of the importation of highly enriched uranium or low-enriched uranium derived from highly enriched uranium that is (1) extracted from nuclear weapons dismantled in the Russian Federation and (2) purchased from the Russian Federation under a government-to-government agreement, the President shall have authority under this section, by order, to waive the applicability of Title VII of the Tariff Act of 1930 to any such highly enriched uranium and to any such low-enriched uranium, including the natural uranium component thereof and any uranium products delivered pursuant to enrichment contracts affected by such imports, provided that, the President determines that the waiver is required in the national security interest of the United States and submits to the Congress a statement setting forth the basis for the determination.

(b) An order issued under this section shall apply to such extent, for such period and under such terms and conditions as the President may provide in such order, except that no such order shall (1) take effect earlier than the sixtieth day which follows the issuance of such order and the submission of the President's statement to Congress under subsection (a), (2) apply to natural uranium or natural uranium equivalents in excess of or in a manner inconsistent with levels of permissible sales established by [section 5212 of the Conference Report], or (3) apply to highly enriched uranium or low-enriched uranium derived from highly enriched uranium in volumes greater than the volumes specified in the government-to-government agreement of February 1993.

(c) No person shall have any cause of action or defense based on this section, and no court shall have jurisdiction to entertain challenges based on any action taken by the President or the Secretary of Commerce pursuant to this section or on an alleged failure to take any such action.

SEC.___ PRESERVATION OF TERMS OF SUSPENSION AGREEMENT IN THE EVENT WAIVER IS EXERCISED

(a) For imports of uranium from the Russian Federation other than those covered by a waiver of Title VII of the Tariff Act of 1930 issued pursuant to subsection (a) of section___, during any period in which such waiver applies, the terms of the Suspension Agreement in effect, or last in effect in the 90-day period preceding the issuance of such order, shall be incorporated by reference into this section and made binding on, and enforceable against, the parties to the Agreement and any other person to the same extent and in the same manner as if the Suspension Agreement remained in effect, unless during the period in which such a waiver applies, the parties by mutual agreement terminate or modify the Suspension Agreement. Any such modification to the Suspension Agreement shall be effective only to the extent that the Agreement is modified, with respect to imports other than those covered by such waiver, shall continue to meet the requirements of section 734 of Title VII of the Tariff Act of 1930.

(b) The Secretary of Commerce shall have responsibility for the administration and enforcement of this section. The Secretary of Commerce may require any person to provide certifications, information or may take any actions that may be necessary to administer and enforce this section. The U.S. Customs Service shall collect, maintain and provide any information which is considered necessary by the Secretary of Commerce for the administration and enforcement of this section.

DETAILS FOR SUBMISSION OF WRITTEN COMMENT:

Persons submitting written comments should submit six (6) copies, with their address and date of request noted, by the close of business, **Friday, March 1, 1996**, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

******

H.R. 947

To exempt semiconductors from the country of origin marking requirements under the Tariff Act of 1930.

see also Uni-Pac Equipment, Inc., under H.R. 1935
see also Semiconductor Industry Association under H.R. 2822

Intel Government Affairs
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intel

February 28, 1996

Philip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: **Comments on Miscellaneous Trade Proposals, HR 947**

Dear Mr. Moseley:

Intel Corporation, a leading manufacturer of semiconductors, personal computer, networking and communications products, urges passage of HR 947 in 1996. This revenue-neutral legislation removes the US requirement to mark semiconductors and their containers with the country of origin.

HR 947 will eliminate concerns relative to the product labeling requirements of countries that treat the origin of semiconductors differently. In the US, the origin of semiconductors is based on the the country where the final assembly process takes place. The EU and Japan, on the other hand, base the origin of semiconductors on the country in which the diffusion process occurs. While EU member states and Japan do not require country of origin marking, they do require that products not be mislabeled. A semiconductor marked in conformance with US law may therefore be mismarked if it is shipped to these countries, creating an export disadvantage. Elimination of origin marking requirements for semiconductors is a simple way to solve this problem.

HR 947 also removes the expense and difficulty of marking semiconductors in an increasingly complex manufacturing environment. The cost to Intel of complying with US marking requirements is estimated at roughly $2 million a year.

Intel believes that HR 947 comports with the intent of US marking law, which is aimed at informed buying decisions. Price, performance and quality are the factors that influence semiconductor purchasing decisions. All are a function of the semiconductor producer rather than the country of origin.

For the reasons stated, Intel urges the Ways and Means Trade Subcommittee to move HR 947 forward with the goal of ensuring its passage by the Congress in 1996. The level of urgency is greater than ever before, given the bill's pendency in Congress since the early 1990's. Assuming the bill is enacted in 1996, Intel believes it should take effect roughly one year later (i.e., not after January 1, 1998) in order to ensure a smooth implementation process for semiconductor users.

Sincerely,

David Rose
Director, Import/Export Affairs
Intel Government Affairs

JIG
Joint Industry Group

THE JOINT INDUSTRY GROUP

818 Connecticut Avenue, N.W., 12th Floor, Washington, D.C. 20006-2702
Telephone (202) 466-5410 Fax (202) 872-8616

Chairman
David W. Rees

Secretariat
James B. Clawson

March 1, 1996

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Request for Written Comments on
Miscellaneous Trade Proposals

Dear Mr. Moseley:

The Joint Industry Group (JIG) submits the following comments with regard to House Ways and Means Advisory requesting written comments on miscellaneous trade proposals. The Joint Industry Group is a coalition of over 100 manufacturing companies, trade associations and various other firms engaged in international trade and customs matters. In particular, JIG would like to offer its opinion generally on amendments to Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) regarding country of origin marking JIG does not wish to comment on H.R. 947 specifically. Our Coalition commends the Chairman and the Subcommittee for recognizing the significance of country of origin marking and appreciates the attention that the Committee has given to rules of origin and country of origin marking over the past year.

JIG would like to reiterate its previous positions in the context of the discussion currently underway on the miscellaneous trade proposals. As both importers and exporters operating in a global environment, our members are directly and substantially affected by country of origin marking rules. Thus, the Joint Industry Group has had a historical interest in marking rules and has consistently advocated rules based on practical business concerns and standards that promote transparency, uniformity, predictability and simplicity of application. Marking rules that are inconsistent, arbitrary and non-transparent and cumbersome can be costly and operate as significant barriers to trade. Some of our manufacturing members incur enormous expense in modifying their manufacturing processes, origin tracking systems and accounting procedures to accommodate the country of origin marking of goods.

Regarding today's broad marking requirements for imports of foreign merchandise, the Joint Industry Group proposes that section 304 of the Act be amended to impose marking requirements only on those goods imported in a condition put up for retail sale. Thus for example, materials, parts, components, subassemblies, items for repair and end-products not put up for retail sale in their condition as imported would be exempted from Section 304 marking requirements applicable to both articles and containers. This exemption would also apply to imported articles of the same kind and quality where only a *de minimis* percentage of such articles is susceptible of sale at retail.

In conclusion, the JIG appreciates the interest and efforts of the Committee to bring about a discussion on the application of country of origin marking rules. JIG will be commenting on the International Trade Commission's Section 332 investigation on country of origin marking and plans to testify at the hearing scheduled in April. The marking of products for country of origin has become burdensome in many sectors of the US economy. The action of the Committee to exempt certain sectors from the burdens of marking is indeed welcome.

Sincerely,

James B. Clawson

Comments of Micron Technology, Inc.
in Opposition to H.R. 947
Semiconductor Marking Exemption

Submitted to the Subcommittee on Trade
House Committee on Ways and Means

March 1, 1996

Micron Technology, Inc. ("Micron") is pleased to have this opportunity to present its views to the House Ways and Means Subcommittee on Trade on H.R. 947, the proposed exemption from country of origin marking rules for electronic components under HTS 8541 and 8542 and their containers, including semiconductors. Micron is a successful and leading U.S. manufacturer of dynamic random access memory ("DRAM") semiconductors, and other semiconductor and electronic products. Our primary manufacturing facilities are located in Boise, Idaho, where we employ approximately 6,000 people.

Micron is strongly opposed to this legislation. In Micron's view, the marking exemption is an unwarranted and unwise departure from Customs and industry practice, will harm U.S. semiconductor manufacturers that produce in the United States, and it will jeopardize the enforcement of the U.S. antidumping law in regulating dumped semiconductor products.

U.S. law, 19 U.S.C. 1304, requires that nearly all imported products must be marked with their country of origin. This measure assists and protects consumers, by allowing them an informed decision in the purchase of products that are foreign-made. Semiconductors are critical products to the U.S. economy and national security. U.S. semiconductor companies are recognized globally as successful manufacturers of high quality products at competitive prices, and are entitled to the same benefits of marking as other manufacturers.

As a leading U.S. semiconductor manufacturer, Micron is proud of its success in establishing leading-edge technology DRAM fabrication and assembly operations in the United States, in Boise, Idaho, and the consequent creation of thousands of good-paying U.S. jobs for highly-skilled workers. Micron is currently building upon this record with construction of a new $2.5 billion semiconductor manufacturing complex in Lehi, Utah. Though construction of this plant has been somewhat delayed by market conditions, it will, upon completion, employ thousands of additional American workers. Micron and other U.S. companies that have successfully invested and *reinvested* their resources in making high quality and competitive American products are entitled to the benefits of country of origin marking.

The marking law also assists Customs in regulating imports, by providing a valuable tool for inspection purposes and enhanced ability to track unfairly-traded imports. Especially with respect to semiconductors, which have been unfairly traded in various circumstances for years, it is crucial that semiconductors be marked with their country of origin. Micron has fought hard to secure an antidumping order against imports of unfairly traded DRAMS from Korea. If dumped semiconductors are commingled with other semiconductors before export to the United States, a foreign exporter may not be able to keep track of their country of origin, and Customs will encounter serious difficulties in enforcing the order and collecting duties owed.

In addition, the U.S.-Japan Semiconductor Arrangement includes antidumping provisions to ensure monitoring of foreign pricing and cost practices to prevent dumping. Negotiations are ongoing towards the extension of this critical agreement. Enforcement of both the dumping order and the U.S.-Japan Semiconductor Arrangement will be seriously compromised if country of origin marking is no longer required.

For many years, Customs has required the marking of semiconductors or their containers, and such marking has long been routine industry procedure. Proponents of marking elimination have not presented a valid reason to depart from that longstanding procedure. In T.D. 75-187 (July 22, 1975), Customs stated that if semiconductors are "large enough to be marked to indicate certain technical and commercial characteristics [i.e., product coding], they are large enough to indicate the country of origin. If the articles are not large enough to bear both markings, the requirement for country of origin must prevail." Customs also authorized marking of semiconductor containers in lieu of individual marking.

Customs' longstanding ruling has been reiterated and reaffirmed in a series of rulings that underscore the continuing relevance of its reasoning.[1] Standard product and country of origin marking indicates that semiconductors are not "incapable of being marked," and such marking is not "prohibitively expensive" (to quote some points raised against such marking). No statutory or other reason for exempting semiconductors is otherwise applicable.

Purchasers of semiconductors have the right to know the origin of the products they buy. Some supporters of H.R. 947 have emphasized that the "ultimate purchasers" of semiconductors are often original equipment manufacturers that are aware of the origin of the product through the qualification process. First, this ignores the fact that there are many other types of purchasers of semiconductors, including consumers that purchase DRAMs at the retail level for upgrading their own PCs. Moreover, Customs' seminal ruling requiring marking of semiconductors, T.D. 75-187, makes clear that the marking requirement is not any less critical just because the ultimate purchasers may include such manufacturers: "The ultimate purchaser of the devices, within the meaning of 19 U.S.C.

---

[1] *See e.g.*, HQ 734761, Oct. 16, 1992; HQ734191, Aug. 8, 1991.

1304(a), may be a manufacturer who uses the devices in the manufacture of new and different articles. . ." T.D. 75-187, July 22, 1975.

Some supporters of the marking exemption also have claimed that a conflict in U.S. and European standards for determining country of origin forces them to remove marking labels on certain exports to Europe. However, the cost of marking removal is very low-- a fraction of a cent for a large number of semiconductors. In addition, the cost of marking removal associated with complying with foreign law for particular exports is not sufficient legal justification for scrapping a valid requirement of U.S. law pertaining to the general importation of semiconductors in the first instance. Moreover, in the great majority of instances, differing standards with respect to marking have not presented problems with respect to foreign Customs clearance, as a practical matter.

If the underlying purpose of the bill is to deal with the trade implications of differences between the United States and other countries in determining country of origin for semiconductors, then the ongoing WTO negotiations regarding rules of origin is the appropriate forum for the public debate and resolution of such concerns. The current legislative approach to this issue -- especially one that remains as controversial within the industry as it has been on the numerous prior occasions it has been proposed -- avoids the real issue that needs to be addressed, i.e., what is the appropriate rule of origin for semiconductors.

H.R. 947 would further exempt even the *containers* in which semiconductors are shipped from marking requirements. Such an exemption is entirely indefensible. In fact, it would be unprecedented for Customs to waive marking on both the individual exempted item *and* its container, unless certain narrow statutory exceptions to the marking requirement (which are completely irrelevant here) were applicable.

Further, Customs maintains a list of items that have received exemptions from marking when it is virtually impossible to mark them. This list, known as Customs "J-List," indicates the types of products which truly merit marking exemptions, such as cigarettes, feathers, eggs, flowers, etc. Although semiconductors do not belong on the J-List because they can be and are routinely marked, ***even J-List items must have their containers marked***. 19 U.S.C. 1304(b).

In conclusion, Micron believes that, rather than enact this harmful and unnecessary legislation, any conflicts or issues related to country of origin marking should be addressed in the context of the ongoing WTO negotiations on rules of origin, and in any event, should not be used as a pretext for passing a provision that is prejudicial to U.S. manufacturers and consumers. We hope that that these views are helpful to the Subcommittee's deliberations.

NEDA

February 27, 1996

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
US House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

The National Electronic Distributors Association (NEDA) strongly supports passage of H.R. 947, which eliminates the US requirement to mark semiconductors and their containers with the country of origin. NEDA consists of over 400 member companies involved in the manufacture and distribution of electronic products on a global basis.

H.R. 947 solves two important problems associated with semiconductor marking requirements. First, it eliminates mislabeling concerns related to the differing origin treatment of semiconductors by the US, EU and Japan. Second, it removes the cost and difficulty of marking semiconductors with the country of origin, a burden that is growing in the face of product miniaturization trends and more complex manufacturing patterns.

US requirements for marking semiconductors and their containers are unnecessary in any case. The purpose of these requirements is to facilitate an informed buying decision based on the origin of a product. Our customers make their semiconductor buying decisions based on quality, performance and delivery time--not the country of origin.

NEDA nevertheless recognizes the importance of origin-related information in the course of shipping semiconductors throughout the world. To prepare for the elimination of semiconductor marking requirements, NEDA supports an effective date of January 1, 1998 for H.R. 947.

For the reason stated, we urge you to take appropriate action to ensure passage of H.R. 947 during 1996.

Sincerely,

Robin B. Gray, Jr.
Executive Vice President

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John ("Chip") J. Yadzis
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SIA **SEMICONDUCTOR INDUSTRY ASSOCIATION**
4300 Stevens Creek Boulevard, Suite 271 ◆ San Jose, California 95129
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August 30, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

The Semiconductor Industry Association (SIA) strongly supports the inclusion of H.R. 947 (Archer/Mineta) in the miscellaneous trade proposals, which are under consideration by the Ways & Means Trade Subcommittee. H.R. 947 is a deficit-neutral bill that exempts from the U.S. requirement to mark semiconductors and their containers with country of origin as currently required by Section 304 of the Tariff Act of 1930.

This bill will eliminate problems related to conflicting origin determinations among the principal semiconductor consuming countries: the United States, EU member nations, and Japan. The United States employs an assembly-based approach to determine the origin of semiconductors, while the EU and Japan focus on where wafer fabrication (diffusion) takes place. The country of final assembly frequently differs from the country of wafer fabrication. Thus, if a device is marked according to U.S. requirements, it may be mismarked when it is shipped to an EU country or Japan. Since the EU and Japan do not require origin marketing of semiconductors, but prohibit false marking, the obvious solution to this problem is to eliminate the U.S. marking requirement.

In addition, H.R. 947 will eliminate the cost and difficulty associated with country of origin marking requirements. While the cost of marking semiconductors is not great when amortized over a production run, the cost is significant to SIA member companies in absolute terms.

It is important to note that the marking law that this bill seeks to amend is designed to enable purchasers of products to make an informed buying decision based on the country of origin. Purchasers of semiconductors overwhelmingly consist of original equipment manufacturers who are generally aware of where the product is made through the qualification process. Congress has already exempted semiconductors in North American trade from marking requirements under NAFTA annex 311.

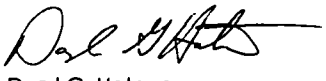
SIA understands that concerns have been raised that H.R. 947 will prevent semiconductor users from using the existing marking to declare the origin of semiconductors on an international basis. These concerns are misplaced for three reasons. First, reliance on marking for international trade facilitation is not contemplated by the U.S. marking statute, which exists to create informed buying decisions. Second, semiconductor marking does not provide a uniform basis for satisfying origin declaration or "false marking" requirements of other countries, given the differing national treatment of the origin of semiconductors. Third, the marking does not coincide with the scope of U.S. or EU dumping orders, which are linked to the country where wafer fabrication occurs.

The most that the marking requirements can accomplish is that products entering the United States are marked in accordance with the intent of the marking statute. Any use of the semiconductor marketing requirements outside this context is inappropriate.

SIA nevertheless wishes to ensure an orderly transition to a system where marking is no longer required. To this end, SIA recommends that the bill's current effective date of January 1, 1996 be changed to January 1, 1997.

In sum, passage of H.R. 947 will provide both short-term and long-term benefits on a deficit-neutral basis. SIA therefore urges you to pursue the incorporation of this bill in trade legislation enacted this year.

Sincerely,



Daryl G. Hatano
Vice President, International Trade
and Government Affairs

cc: Thelma Askey, Ways & Means Trade Subcommittee
Meredith Broadbent, Ways & Means Trade Subcommittee
Don Carlson, Office of Representative Archer
Frank Paganelli, Office of Representative Mineta
Mary Wignot, Ways & Means Trade Subcommittee

STATEMENT SUBMITTED ON BEHALF OF XEROX CORPORATION

ON H.R. 947,
LEGISLATION TO EXEMPT CERTAIN SEMICONDUCTOR DEVICES FROM COUNTRY OF ORIGIN MARKING REQUIREMENTS

TO THE
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON TRADE

March 1, 1996

Xerox Corporation supports the elimination of country of origin marking requirements for parts, components, accessories and kits used in certain office copiers, printers and facsimile machines. Xerox strongly urges the Subcommittee to adopt an expansion of the statutory marking exemption in H.R. 947 for semiconductor devices to include the above named products when it considers H.R. 947.

We laud the Subcommittee on Trade for its serious consideration during this Congress of product marking issues which are very important to the business community. Written comments on H.R. 947 were requested by the Trade Subcommittee in its Press Advisory of January 31, 1996.

Implementation of Country of Origin Marking Requirements

Current US country of origin marking requirements contain certain provisions that impede the competitiveness of American corporations by imposing a compliance burden on companies that does not reflect modern methods of manufacturing and distribution. As presently written, Section 304 of the Tariff Act requires that all merchandise imported into the United States, or its container, must be marked permanently, legibly and in a conspicuous place so as to indicate to an "ultimate purchaser" in the U.S the English name of the article's country of origin. The purpose of the law is to advise United States consumers, at the point of purchase, of the origin of a good.

Unlike most other countries, which require origin marking only on specific classes of merchandise, the United States' marking law requires the marking of all imported goods, unless specifically exempted. The purpose of the marking law is to require that a product's foreign origin be communicated to an "ultimate purchaser" in the United States, lest the product's origin influence a decision to buy the good. The marking requirement was imposed at a time when national sentiment against imported goods ran high, and United States imports of manufactured products consisted mainly of finished, consumer-ready articles.

That was six decades ago. Consumer perceptions of, and attitudes toward, imported goods have changed markedly since then. In addition, the trend toward global sourcing of parts and components means that a large percentage of United States manufactured goods imports consists of parts and components to be used in United States manufacture, or as spare or replacement parts for domestically-made articles. The burden of marking falls increasingly on US manufacturers such as Xerox, rather than on foreign producers. Moreover, consumers no longer care about the origin of most goods which they purchase. In a globally sourcing economy, consumers' purchasing decisions are driven overwhelmingly by product price, quality and service. Origin is largely irrelevant. For example, a United States company whose photocopier needs a replacement part cares little or nothing about the national origin of the part -- only that the part is affordable and effective once installed.

Changes in Modern Business Practices

There is widespread recognition within both government and industry that corrective action is imperative. Among the major changes in production and sourcing which have

rendered current marking statutes out of date are the following:

(1) **Global Sourcing:** Years ago, manufactured goods and all of their components were typically sourced in a single country. Today, due to global sourcing techniques, articles manufactured in a given country are likely to contain components sourced in many different countries;

(2) **Multiple Supplier Strategies:** To ensure security of supply, United States and foreign manufacturers typically source key or standard components from multiple suppliers, who are often located in different countries of origin. As a result, physically identical parts which are commingled in manufacturing inventory or spare parts storage may have different countries of origin;

(3) **Modular Design:** Manufactured goods increasingly feature modular design and incorporate "sacrificial" components which are easily replaced by the user. Years ago, a defective machine might be brought to a repair shop for the installation of replacement parts and the marking of those parts would be a non-issue. Today, consumers are increasingly able to purchase replacement parts at retail; and

(4) **Miniaturization:** The miniaturization of component parts, particularly in the electronics industry, which was unknown when the current marking law was adopted, has resulted in a proliferation of components traded internationally which are extremely difficult to mark with country of origin.

Examples of the Impact of Marking Requirements on Xerox' Operations

The cumulative effect of these rulings is to create a burdensome marking regime of extraordinary complexity that significantly adds to the cost of business. These, in turn, negatively impact on the competitiveness of American businesses. To illustrate, Xerox incorporates parts in its repair kits from as many as 27 countries. The cost of identifying, tracking, and marking individual components in the multitude of kits produced by Xerox may, in some cases, actually exceed the cost of the components themselves. Developing immense label inventories to cover every possible option fails the common sense test; yet it is what law requires, and what Xerox does, at considerable expense and with no tangible or intangible benefit to the company or its customers.

To further illustrate, Xerox might purchase 100,000 units of a particular part from a supplier in France. Of these, perhaps 97,000 will be used in the manufacture of copiers, fax machines, printers, and other articles in the United States and will be thus exempt from marking under the "ultimate purchaser" marking requirement of 19 U.S.C. Section 1304(a)(3)(H). However, the remaining 3000 pieces may be used as spare or replacements parts and will not be "substantially transformed" in the United States. At the time of importation, Xerox cannot determine which of the 100,000 fungible imported parts will be used in manufacturing and which will be used for other purposes. As a result, Xerox must devise methods to comply with US marking requirements.

One option would be to mark all 100,000 units to show their foreign country of origin. This will result in unnecessarily marking 97,000 of the units. In some cases, Xerox' foreign supplier may produce the part in question for many different customers and may be unwilling to change its manufacturing methods (molds, tooling, etc.) just to mark a minor percentage of its output. Xerox' other option is to establish, at substantial expense, a post-importation system to ensure the repacking and marking of those parts which are removed from the company's inventories and sold or distributed as spares or replacements. At great cost, Xerox does one or the other in order to comply with Section 304's requirement of universal marking.

In the vast majority of cases, the parts will be installed by a Xerox Technical Representative or Independent Service Organization. The owner or lessee of the equipment

will never see the parts, obviating the stated goal in Section 304 of informing consumers of the origin of goods which they may purchase. Indeed, the owner or lessee most likely will regard the origin of the parts as irrelevant, the primary concern being that the equipment is operational or properly maintained.

Xerox Recommendation for an Amendment to the Marking Statutes

Xerox Corporation urges the Trade Subcommittee to amend Section 304 of the Tariff Act of 1930 to provide a specific exemption from marking for parts, components, accessories and kits, and their containers, used in the original manufacture or subsequent repair, servicing or installation of certain office copiers, printers and facsimile machines. The products identified are currently provided for under subheadings 8471.60.51, 8471.60.52, 8471.6061, 8471,6062, 8472.10, 8472.90.70, 8517.21, 9009.12 and 9009.90, of the Harmonized Tariff Schedule of the United States (HTSUS). Xerox would also like the exemption to provide for products having similar functions that might be provided for under other subheadings of the HTSUS in the future.

Summary of Reasons in Support of an Exemption for Certain Parts and Components

In conclusion, Xerox is urging Congressional enactment of an exemption from country of origin marking for certain parts, components, accessories and kits for the following reasons:

-- Physical marking of parts and components does not accomplish the stated goal of Section 304 of informing consumers of the origin of goods because consumers do not as a rule see the parts or components. In particular, replacement parts in these classifications are unique to specific equipment. They are normally purchased by an authorized repair firm, not by the consumer. The consumer usually does not see the repair or replacement parts.

-- The cost to manufacturers of requiring the marking of parts and components and of tracking their immense repair and replacement parts inventories results in a significant increase in costs to companies and, ultimately, to consumers.

-- Foreign countries do not require these constrictions, placing firms manufacturing and selling in the US at a competitive disadvantage.

We appreciate this opportunity to submit our views on this extremely important issue and look forward to working with the Subcommittee on Trade toward this end.

H.R. 1543

To amend the Harmonized Tariff Schedule of the United States to restore the duty rate that prevailed under the Tariff Schedules of the United States from certain twine, cordage, ropes, and cables.

WILLIAM O. LIPINSKI
3D DISTRICT, ILLINOIS

COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
RANKING DEMOCRATIC MEMBER,
SUBCOMMITTEE ON RAILROADS
DEMOCRATIC STEERING COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515

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February 27, 1996

Dear Members of the Subcommittee on Trade:

I am writing in support of H.R. 1543, which has been incorporated into the miscellaneous trade proposal released by the Subcommittee on Trade on January 31, 1996. I introduced H.R. 1543 on behalf of Uni-Pac Equipment, Inc., a company located in my district in Bridgeview, Illinois.

Uni-Pac imports a very specific type of twine from Switzerland for use as a pallet stabilizer. The company needs this twine because it is the only kind which works with the pallet-tying machine they import and sell. This twine is not domestically produced.

The duty on the twine, which is defined by its size and material composition in the miscellaneous trade proposal, was raised from approximately eight percent under the Tariff Schedules of the United States (TSUS) to approximately twenty-one percent under the Harmonized Tariff Schedule (HTS) effective in 1989. Though the switch from TSUS to the HTS was not intended to affect duty rates, some duties like this one increased due to error or reclassification difficulties.

The higher HTS duty costs the twine's only importer, Uni-Pac, tens of thousands of dollars annually. In addition, the company is liable for more than $150,000 in back payments owed to U.S. Customs. This is financially devastating to Uni-Pac and has a significant adverse effect on the competitiveness of its products.

To rectify the problem, I introduced H.R. 1543. H.R. 1543, which is included in the most recent miscellaneous trade proposal, restores the duty on twine to the level that existed under the TSUS – 7.9 percent. The Congressional Budget Office has reviewed the bill and, based on information from the International Trade Commission, estimates that it would decrease revenues by less than $500,000 annually, net of payroll and income tax offsets.

Because the twine in question is not domestically produced, the HTS duty does not benefit any American company and serves no important policy function. It only makes Uni-Pac less competitive in the marketplace. At a time when jobs and the economy are so important in our country, I believe that restoring the duty to its proper level is a fair and appropriate step to enhance the competitiveness of this company.

I appreciate your consideration of this important matter. I hope that this miscellaneous trade proposal will move quickly through the legislative process and become law in the near future. If you have any questions or require further information, please do not hesitate to contact me or Colleen Corr of my staff at 225-5701. With best wishes and kind regards, I remain

Sincerely,

Bill Lipinski

WILLIAM O. LIPINSKI, M.C.

WOL/cc

9018 SO. ODELL AVENUE
BRIDGEVIEW, ILLINOIS 60455
(708) 599-2788

February 15th, 1996

HOUSE WAYS & MEANS COMMITTEE
SUB COMMITTEE ON TRADE
1102 Longworth House Office Bldg.
Washington D.C. 20515

Attention: Mr. Phillip Moseley

Dear Mr. Moseley:

We at Uni-Pac Equipment, Inc. would like to urge you to please facilitate passage of Congressman William Lipinski's Trade Bill HR-1543. Passage of this Bill would allow us to continue our business operation, while non-passage would very likely put us out of business.

We currently owe U.S. Customs approximately $150,000.00. You can imagine what a hardship it would be for a small business to come up with that kind of money.

Because the introduction of the Harmonized Tariff Schedule was not supposed to increase an importers Duty we feel that the increase that our company incurred of over 300% is not only unfair, but unnecessary. This increase occurred due to an accidental deletion of our Tariff number in the translation from the Tariff Schedule of the United States. There are no United States manufacturers of this twine.

Uni-Pac Equipment imports approximately 80,000 pounds of this twine per year. Although it is an important part of our business you have to realize that this poundage is a meager amount for a United States Mill to incur the cost necessary to attempt to duplicate this twine. The market for this product just is not there.

We have been endeavoring to pass this Legislation for over five years now and have spent hundreds of hours working with Congressman Lipinski's and Senator Simon's aides trying to get this Bill attached to a suitable vehicle for passage. Hopefully this will be the year.

Thank you for your cooperation regarding this matter. Should you require any additional information please do not hesitate to contact us.

Sincerely,

James McMahon
UNI-PAC EQUIPMENT, INC.

JEMc/db

H.R. 2358

To suspend until January 1, 1998, the duty on certain electrical capacitors.

January 9, 1996

The Honorable Phil Crane
Chairman,
House Ways and Means
Subcommittee on Trade
233 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Crane:

As an American manufacturer of capacitors, we are very concerned about H.R. 2358 now in front of the House Ways and Means Committee.

This Bill is intended to remove all import duties from the very products we manufacture here at American Shizuki Corporation. It is our concern that without the modest protection that the import duties provide the capacitor market will be flooded with inexpensive imports until such time as large and small United States manufacturers are driven out of business.

Capacitors are electrical components and there is not much room for profit within the different component products. United States manufacturers are bound by US regulations as far as wages, quality standards, safety standards, and environmental standards. Foreign competitors are not bound by the same regulations and without some sort of duty to make competition fair, US manufacturers would be eliminated.

The current rate of duty on imported capacitor products is minimal but essential to our business and we request that you do all that is possible to defeat this bill and support the duty rates currently in existence.

Thank you for your time.

Sincerely,

American Shizuki Corporation
David M. Jewell

301 West O Street • Ogallala, NE 69153
Telephone: (308) 284-3611 • FAX Numbers: (308) 284-2708 • (308) 284-8324 • (308) 284-4141

Electronic Industries Association

Formal Record Statement Of

The Capacitor Division of the Components Group of the Electronic Industries Association

Before the Subcommittee on Trade Committee on Ways and Means United States House of Representatives Concerning H. R. 2358

Submitted February 29, 1996

The Capacitor Division of the Components Group of the Electronic Industries Association is pleased to respond to the January 31, 1996 request by the Subcommittee on Trade for comments on a variety of trade policy matters. In particular, EIA would like to offer comments on item number 5 (H.R. 2358), which provides for a zero tariff on certain types of capacitors. The Electronic Industries Association's (EIA) Capacitor Division is firmly opposed to this provision because it would seriously disadvantage U.S. manufacturers vis-a-vis their foreign competitors.

For more than 70 years EIA has been the national trade organization representing U.S. electronics manufacturers. Committed to the competitiveness of the American producer, EIA represents the entire spectrum of companies involved in the design and manufacture of electronic components, parts, systems and equipment for communications, industrial, government and consumer uses. EIA is the representative of the U.S. capacitor industry.

BACKGROUND ON THE U.S. ELECTRONICS INDUSTRY

The electronics industry plays a central role in the overall health of the U.S. economy in today's global economy. In 1995, U.S. sales of electronics products registered about $381 billion, an increase over the previous year of 14%. In terms of employment, electronics directly employs millions American workers.

In addition, electronics has led the way in bringing our nation's economy fully into the global marketplace. Indeed, a number of our largest member companies are well-known and successful global companies who derive more than 50% of their total revenues from

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export sales. Such figures help underscore the fast-paced nature of the U.S. electronics industry as well as the benefits and challenges for the U.S. economy stemming from globalization and international competition.

We are pleased to note that our industry has been making strong progress in addressing the challenges brought forward by globalization and international trade. For example, the U.S. electronics industry exported $101 billion in 1994 -- a 19% increase over 1993. In addition, the U.S. is poised to expand high-value markets in both systems and components.

EIA rejects the claims of American decline in high technology but cautions that both the recent macro-level and individual product-level achievements of the U.S. high technology sector are by no means guaranteed and that the pressures associated with international competition will remain intense for domestic producers. Indeed, our international competitors -- particularly in Western Europe and the Pacific Rim -- are well tested at the level of the individual firm and within individual product markets. The talents of many international firms have been proven repeatedly in recent decades as being world class and up to the challenge of bringing high-quality products to market in ever-shorter periods of time.

GENERAL VIEWS ON TRADE POLICY

Overall, EIA believes that U.S. trade policy must include a commitment to enhance U.S. exports. EIA believes that there must be an intensified effort toward ensuring the fair treatment of U.S. products and services overseas.

As part of this, U.S. foreign policy must change many of its nearly half-century old assumptions and should not unduly interfere with efforts to keep markets open. Indeed, EIA has made continued efforts to open markets abroad a key policy objective for the association and believes that this goal should be a top U.S. foreign policy goal as well.

SPECIFIC VIEWS ON H.R. 2358

Capacitors are the backbone of many electronics products and, as a result, of the electronics industry as a whole. Simply put, they are energy storage devices that are essential to the operation of a wide range of products -- from the most sophisticated computer to the simplest electrical product. For many years, U.S. companies were the predominant manufacturers of these products. Today, however, many foreign manufacturers produce these components. Importantly, these manufacturers are located in countries where U.S. companies are not afforded the ability to compete with them on a level playing field. The elements of this unlevel playing field include, for example, prohibitively high tariffs.

Current U.S. duty rates on capacitors are approximately 9.6% ad valorem. We believe that a premature repeal of these duties would negatively affect U.S. capacitor manufacturers and could cost many good paying electronics manufacturing jobs in this industry. In particular, many of our companies' competitors operate in markets with high

tariff rates on capacitor products. For instance, Brazil and China have rates upward to 20%, while Thailand mandates duty rates at 35%. Any unilateral U.S. reduction in tariff rates in this sector without comparable concessions from some of our trading partners would disadvantage our manufacturers in the global marketplace.

H.R 2358 would eliminate U.S. tariffs on capacitors without calling for commensurate reductions in other countries. Such a unilateral reduction would serve to only disadvantage of U.S. manufacturers without requiring foreign countries to similarly reduce their tariffs. In advocating this point, we reiterate for the Subcommittee our long-standing support for free and fair global trade. We note, however, that such trade needs to be reciprocated by all of our trading partners.

We, therefore, want to express our formal opposition to H.R. 2358 and urge that the Subcommittee not consider its enactment.

Should the Subcommittee wish additional information, you may contact David B. Calabrese, EIA's Director of Government Relations, at (703) 907-7591.

Peter J. Walsh
Vice President
EIA Components Group

February 29, 1996

H.R. 2426

To amend the Tariff Act of 1930 with respect to the marking of door hinges.

see also Canada, Government of, Michael R. Leir under H.R. 2795

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

STATEMENT OF CAL-ROYAL PRODUCTS, INC.
CITY OF COMMERCE, CALIFORNIA
IN OPPOSITION TO H.R. 2426[1]

Cal-Royal Products, Inc. submits these written comments pursuant to Subcommittee Chairman Crane's request for comments on Miscellaneous Trade Proposals as announced in Subcommittee Advisory TR-17 of January 31, 1996.

Cal-Royal Products, Inc. is located at 2110 Tubeway Avenue, City of Commerce, California 90040. Cal-Royal, among other things, is and importer and distributor of hinges of various types.

Cal-Royal requests that H.R. 2426 not be reported favorably either by the Subcommittee or by the Committee. There are a variety of reasons should not be reported favorably. These reasons will be set out in further detail below, but in summary the reasons are:

1. The current marking practices in the industry, fully comply with the marking laws and regulations in that the hinges are sold in the United States in boxes, which are marked with country of origin. The boxes are shipped in larger boxes which are also always so marked, and the inner box contains one or two pair of hinges usually in a plastic bag and these bags are also marked with country of origin.

2. The ultimate consumer is always aware of the country of origin of the hinges.

3. Any sale of hinges to the ultimate consumer without country of origin marking is a fugitive or de minimis use and occurs only rarely, if at all. Under U.S. Customs laws fugitive uses are to be disregarded and not considered.

4. Such a fugitive use, if such use exists, is against the current laws and regulations and is also contrary to the certifications made by importers to Customs. All such uses are therefore an enforcement

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[1] A bill requiring that hinges and parts be marked with country of origin on their exposed surfaces by means of dye-stamping, cast-in-mold lettering, etching, etc.)

problem, not a regulatory problem requiring the change of law sought in the bill.

5. In any event, the sale of loose hinges to consumers at retail is extremely unlikely to occur from a commercial point of view (and therefore does not merit novel rulings to prevent it from occurring), because hinges must be bought in pairs. This being so, hinges will always be sold as they are imported in plastic bags containing the country of origin marking. A change in law as ought in the bill would therefore not result in any tangible changes in the marketplace.

6. The die-sunk marking sought to be required by the bill would be extremely costly.

7. If marking as proposed by the bill (i.e. by stamping, cast-in-mold lettering) is deemed necessary, the requirement to place such lettering on the exposed surface of the installed hinge should be eliminated because it is both superfluous and designed to harass importers. Indeed the Customs Regulations provide that the marking of the country of origin need not be on the face of the hinge, but may be on the back of the hinge.

8. As the foregoing indicates, the proposed bill would drastically alter the Customs laws by providing a special and unique rule for a particular product. This cannot but help promote the rapidly increasing interference of government in commerce, the proliferation or regulations and red-tape and the multiplication of special laws of this type for all products in all industries, essentially nullifying the concept of equal justice for all.

FACTS: THE MARKET AND DISTRIBUTION CHANNELS FOR HINGES

The market for hinges of various types in the United States is quite large but exact figures are difficult to ascertain. Cal-Royal estimates that total U.S. consumption is approximately $100 million, with about eight to nine percent of that sum accounted for by imports.

In the United States, hinges (whether domestically manufactured or imported) are almost always sold in cartons or boxes. The cartons or boxes usually contain one to two pairs of hinges.

These boxes are, in turn, packed in master boxes of (usually) 24 pairs of hinges to the master carton. When the hinges are imported, both the master carton (approximately 24 pairs) and the inner carton (one to two pairs) are marked with the country of origin. In addition, often the hinges themselves (either individually or in pairs) when in the inner box are packed in nylon. When the hinges are so packed, the nylon bag also is marked with the country of origin.

The hinges are then shipped from warehouses (including the warehouses of domestic manufacturers) to distributors who then distribute the hinges to their customers. The ultimate customers tend to be builders or manufacturers who further assemble or manufacture the hinges into another product, a door and door frame, for example.

During this entire process the hinges remain in enclosures (inner and/or outer boxes, nylon packages) with the country of origin still visible to potential customers in a prominent place. They are so sold to the ultimate consumer. There can be no doubt that the ultimate consumer buying hinges is made aware of the country of origin for the article because the package (s)he buys it in is marked with the country of origin.

Any sale of the hinges to consumers in lose pieces is a fugitive and de minimis use. This is so because such sales if the ever do occur, occur rarely. In addition, hinges are sold by the pair, and it would be very unusual as well as unwise a consumer to purchase less than a hinge-set. To purchase a hinge the two portions must be together. When thus together, the pair of hinges is always marked on the plastic bag or on the box.

Hinges are also sold at retail in hardware stores, but this is a much smaller market (approximately 10-20% of the market) than sales to builders and other manufacturers (approximately 80-90% of the market). Nevertheless, when hinges are sold at retail, they are sold either a) in blister packs marked with country of origin or b) in the small inner boxes described above, also marked with country of origin, or c) in the plastic or nylon bags, also described above.

As a practical and commercial matter they cannot be sold loose and therefore, as a realistic and practical matter, the ultimate consumer will never purchase a hinge without having the country of origin clearly visible in his or her hands.

It is therefore very rare for hinges to be sold in any channel of trade in an unpackaged or unbagged or unboxed state. To do so would be extremely commercially impractical. The domestic producers' apparent assertions to the contrary are not supported by either what actually happens in the trade or what may commercially occur and its petition should be rejected.

THE MARKING LAWS FOR HINGES SHOULD NOT BE CHANGED.

In view of the practicalities of the market-place, we request that the Subcommittee and Committee do not report the bill favorably.

1. Current marking laws and practices are sufficient.

The country of origin marking laws and regulations provide that marking of country of origin remain on the article or its packaging in such a manner as to remain on the article until seen or bought by the ultimate consumer. The Customs Regulations provide,

> "***the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling."

19 C.F.R. 134.41 (b). The operative phrases in this regulation - as far as this case is concerned - are "deliberately removed" and "normal distribution and store handling."

As is clear from the discussion of the distribution channels of hinges we have reviewed above, all imported hinges are marked with country of origin and those markings are intended to remain with the article until sold to the ultimate consumer.

Indeed, as we have discussed, from a commercial standpoint, hinges cannot be sold without containers and thus cannot be sold without country of origin markings. The sales of hinges in a loose state as described in the notice of petition occurs only when the packaging and country of origin markings are deliberately removed. Likewise, these packages were designed to withstand normal distribution and store handling.

H.R. 2426 does not seem to assume the contrary. Rather, we believe that certain domestic producers have been claiming that the packaging (and thus the country of origin marking) is being removed deliberately and in contravention of normal distribution and store handling. Certain domestic producers have also claimed (without support) that they believe that the importers' certifications pursuant to 19 C.F.R. 134.26 are sometimes at odds with actual practice.

All these problems and concerns are enforcement problems and outside the scope of the Section 304 and the Customs marking requirements. As we have demonstrated, the law and regulations provide that the item or its packaging be marked with country of origin so that the marking on the item or its packaging stays with the article until sold in the course of normal distribution and store handling. That is precisely the situation with hinges. The hinges are always marked with country of origin so that in the normal course of business the marking will remain on or with the article until sold. That brings the marking within the requirements of the current marking law and regulations and any change is unnecessary.

2. The Domestic Producer's Desire for Protection Should not Drive Changes in the Marking Laws.

This legislation requiring the constant permanent display of country of origin on hinges is obviously nothing more than a non-tariff form of protectionism. Apparently, it is hoped that such a change in the law requiring country of origin on the hinges themselves will induce contractors to purchase domestically produced hinges. In a petition filed with Customs, for example, the domestic industry claimed that if a building owner sees a door with a hinge which has been marked with a foreign country of origin, he will be more likely to order doors specifying a particular hinge.

Under GATT, this is an impermissible consideration for Congress to employ in making country of origin laws. The marking rules are designed to let the purchaser know the origin of the product. The only permissible consideration to employ in enforcing this law is whether the markings comply with the marking regulations.

In this case, as we have stated above, the great majority of hinges are bought by builders and other manufacturers. Under well established case law, see, e.g. United States v. Gibson-Thomsen, 27 CCPA 267 (CAD 98) and under the regulations, 19 C.F.R. 133.45(a), if the hinges are to be incorporated into a different article of commerce,

the ultimate consumer for country of origin purposes is the manufacturer using the hinge. In such cases - which are the overwhelming majority of hinge sales in the United States - the ultimate consumer always knows the origin of the hinge because it is marked strictly in accordance with the regulation. See also Customs Headquarters' Ruling HQ 732999 (January 25, 1990). The domestic industry does not even dispute this. Rather, its argument is that Congress or Customs should make the sale easier for the domestic manufacturer by requiring an additional, expensive, and unwarranted marking on the imported hinge. Even if the desired goal were met by such marking, neither Congress nor Customs should manipulate the marking laws and regulations for such discriminatory purposes.

3. Die Sunk marking is prohibitively expensive.

As we have stated, the overwhelming majority of hinges are sold to those who further assemble or manufacture the hinge into new products and there is no doubt that such consumers are aware of the country of origin.

Rather there have been assertions that a problem exists is at the retail level. Hinges sold at retail tend to be much lower in value than hinges sold through other channels. The cost of die-sunk markings on such hinges would increase the cost of hinges by approximately 15%. Thus, such marking will make importation prohibitively expensive. Consequently, the markings would be excepted by virtue of 19 C.F.R. 134.32 (c), and would still be excluded under the proposed legislation.

Since, as we have demonstrated, the markings of the containers will reasonably indicate the origin of the hinges, marking of the hinges themselves is not required. 19 C.F.R. 134.32 (d).

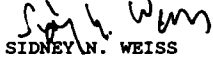
4. If marking is required, it should not be required on the exposed surface.

The bill proposes that the marking should be required on the exposed surface of the hinge. This is in keeping with the domestic producers' actual intent to use the marking law for its own strategic marketing purposes. As we have demonstrated above, this is impermissible. In addition, Customs has already ruled in a very similar situation that when marking is required, it is sufficient that the marking be on the hidden portion, not on the exposed portion. Headquarters' Ruling HQ 733659 (August 20, 1990). Thus, if marking is required, it should not be on the exposed portion.

CONCLUSION

We respectfully request that the Subcommittee and Committee do not report this bill favorably.

RESPECTFULLY SUBMITTED,



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Congress of the United States
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Office of the Democratic Leader
Washington, DC 20515–6537

February 17, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
1104 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

We are responding to your request for comment regarding pending miscellaneous trade legislation. We support, and strongly urge the Subcommittee to take up and approve, H.R. 2426, legislation that will clarify marking requirements for imported metal hinges.

H.R. 2426 was introduced to clarify, to the benefit of importers and U.S. consumers alike, the manner of country of origin marking required on door hinges, so that product origin information reaches the ultimate consumer. We have been alerted to significant confusion, if not evasion, regarding the current law's application to hinges. While many hinges imported into the United States are stamped in the metal with origin information, thee is a substantial amount of product coming in not marked on the hinge and often not marked on the individual box, which fails to provide the requisite information to the ultimate consumer. This situation needs to be addressed and clarified.

Specific marking requirements exist in current law for other products. Congress has previously acted to require specific marking on other metal objects by stipulating, in law, in-the-metal-marking on certain pipe and fittings, compressed gas cylinders and manhole rings and covers (19 U.S.C. 1304). Manhole covers, in particular, must be marked "on the top surface" with the country of origin. These provisions have served to clarify the requisite marking for importers and have also simplified enforcement for Customs and insured that the country of origin information will survive to educate the ultimate consumer. That is our goal with the provisions of H.R. 2426.

We strongly urge the Subcommittee to approve H.R. 2426 and include it in any miscellaneous trade legislation. Please let us know if you need any further information regarding this provision. We appreciate your attention to this important issue and look forward to working with you.

Sincerely,

Mel Hancock

Bill Emerson

Dick Gephardt

Jim Talent

March 1, 1996

Comment on:
Miscellaneous Trade Proposals
Subcommittee on Trade
Ways and Means Committee
U.S. House of Representatives
1101 Longworth House Office Building
Washington, D.C. 20515

Comment submitted by:
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This comment is submitted on behalf of the Hager Hinge Company of St. Louis, Missouri. Hager Hinge supports H.R. 2426 and requests that the Subcommittee approve the bill and move it separately, or include it in pending trade legislation.

American trade policy is based on two basic assumptions: the first is that free trade will be good for the American consumer. The other complimentary doctrine is that open international trade will produce exports, thus creating U.S. jobs. This policy has not always produced the desired results. Since the end of World War II, the United States has steadily replaced jobs in its industrial sector with jobs in the service sector. Many of the jobs lost have resulted from international trade policies which fostered the development of exports, but often times did not benefit the American worker.

Increasingly, foreign manufacturers have taken advantage of the openness of U.S. markets by copying popular U.S. goods and creating the impression for the American consumer that they were domestic, not imported, products. By no means has this effort been limited to the high-end, popular domestic products. This purposeful deception has been used in any number of industrial products, including manhole covers and door hinges. H.R. 2426 is intended to remedy this deception for door hinges by giving consumers useful information on the country of origin at the time they ultimately use the product, not when it is sold in a wholesale or assembling operation.

H.R. 2426, introduced by Rep. Richard A. Gephardt and Rep. James Talent, seeks to amend the Tariff Act of 1930 with respect to the marking of door hinges. Like the U.S. Code sections controlling the marking of certain pipe and fittings (19 U.S.C. 1304(c)), compressed gas cylinders (19 U.S.C. 1304 (d)) and manhole rings, frames and covers (19 U.S.C. 1304(e)), this bill articulates a standard of legally sufficient marking for door hinges by statutorily requiring the marking methods to be used, together with specific exceptions thereto.

H.R. 2426 was introduced to address the unfair and confusing interpretation and enforcement of marking laws as they apply to door hinges. U.S. hinge manufacturers, including Hager Hinge, have found themselves competing with certain foreign hinges that are unmarked as to their foreign origin. They may be marked on the case (container) at one time in order to enter the country, but the container is often separated from the hinge box. This is particularly true in the building process for industrial, commercial and residential structures. If the marking were integrated into the hinge itself, it would be insured to remain accessible throughout the building process.

Like many industries, domestic hinge manufacturers market their product based in large part on U.S.-origin and quality. Without accessible information as to foreign origin, U.S. manufacturers lose a prime factor differentiating them from their foreign competition and are placed at a competitive disadvantage. When the purchaser has a domestic hinge in one hand and a foreign hinge in the other, the absence of foreign origin information implies that it is a U.S. product.

The domestic hinge industry has established itself as a full service hinge and door hardware supplier. In order to fill market needs, many companies import products to supplement what they manufacture in the United States. (Hager's imports are clearly marked as to country of origin.) Imports are targeting the lines still being manufactured in the United States which historically yield a higher rate of return. This is not an industry that can long suffer this trade disadvantage and unfair competition in its home market. The industry has very tight margins and has had few if any price increases in years. If the industry does make money it is because it blends its rate of return across the whole line of goods; some products yield a higher return than others. It is no coincidence that the products which most egregiously disguise their foreign origin are targeting the more profitable hinge lines in the industry.

If imports successfully close domestic producers out of these sectors, the rate of return will shift -- from the black to the red. Without the blend of products and product returns, there will be no hinge manufacturing left in the United States. Companies like Hager will have to convert to an importing business, close the business or move offshore. All of these options will cause job losses.

Both Hager's manufacturing and importing experience provides insight into the difficulty and costs of various marking methods. It is not difficult and not costly. Of the goods imported, Hager has each hinge stamped with the country of origin on it (unless they are very small). In addition, they put the country of origin information on the blister packed card, the box or the container, whichever is applicable.

It is out of this situation that H.R. 2426 arises. Whatever the underlying problem -- profound confusion as to what marking is required or intentional evasion of the law -- Congress should act to clarify the matter for all parties involved.

The marking on hinges entering the United States varies unpredictably from manufacturer to manufacturer, importer to importer. For example, hinges may enter the United States with country of origin marked on the container only. The marked container may be as small as a blister pack 3" x 5" card or as large as a case. (A case of sixteen boxes each holding three 4½" by 4½" hinges weighs about 55 pounds.) The inside boxes may or may not reflect the country of origin, despite the fact that they are often separated from the case long before they reach the ultimate purchaser.

In contrast, there are some foreign hinges in the market which bear country of origin marking individually, stamped in the metal, on each hinge, but the marking is on the back of the hinge. While country of origin information is ascertainable from the hinge itself before installation, after installation there is no way to see the mark. This is true regardless of who is considered to be the ultimate purchaser -- the contractor, the sub-contractor or the building owner. The processes most assured to maintain country of origin information are die stamping, cast-in-mold lettering, etching or engraving on the face of the hinge.

Imported goods must be labeled with foreign origin information until they reach the ultimate purchaser. The ultimate purchaser is defined as the last person in the United States who will receive the article in the form in which it was imported. (19 C.F.R. 134.1(d)). The question of who is the ultimate purchaser is an interesting one when analyzed in terms of door hinges, but that is not the underlying issue which H.R. 2426 intends to address. H.R. 2426 involves an issue of fairness and fair trade, regardless of who may or may not be considered the ultimate purchaser. This is a circumstance where regardless of the efforts of the Customs Service to stop it, foreign-origin goods are being

confused as (or passed off as) U.S.-origin goods to the detriment of not only the domestic hinge manufacturing industry, but to the detriment of every consumer who trusts that articles of foreign origin will be labeled as such.

The hinge situation is very much like that which Congress contemplated when dealing with manhole covers (19 U.S.C. 1304(e)) in that it involves a product embedded into a surface upon installation. If the marking is not on the correct side of the product, it is hidden from all parties. In the case of manhole covers, Congress determined that statutory action was required to remedy the problem. The rationale for the provision stated in the Senate report follows:

> There appears to have been significant evasion of the law with regard to these articles. For example, manhole covers, rings and assemblies thereof are made of iron. Usually the undersurface of these materials is ribbed, with a rough and irregular surface. Information obtained by the committee suggests that the marking requirement is ordinarily met by marking the country-of-origin on the underside or the edge of the manhole cover and on the underside of the ring. Frequently in current practice the ring is embedded in concrete obscuring the marking, and in any event the rough surface invites destroying the marking since it is difficult to detect that a marking has been destroyed under these circumstances. The industry and the Customs Service report that consultation and administrative proceedings have not resulted in a resolution of this problem....
> (S. Rept. No. 308, 98th Cong., 2d Sess. (1984))

At least the manhole covers were being indeliby marked in the metal, albeit on the underside of the cover. Hinges are not even routinely marked in the metal. If anything, the situation with hinges is more onerous and merits Congressional attention and action.

Customs regulations appear to bolster the contention that metal products, such as hinges, should be marked in the metal. Section 134.41(a) states that "[a]s a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched...." (19 C.F.R. 134.41(a)). The regulations go on to provide a whole laundry list of metal articles that "shall" be marked in the metal:

> Except for goods of a NAFTA country, articles of a class or kind described below *shall* be marked legibly and conspicuously by die-stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears scissors, safety razors, blades for safety razors, surgical instruments, dental instruments scientific and laboratory instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles.... (19 C.F.R. 134.43(a)). (Emphasis added.)

While Customs' regulations "suggest" marking worked into the product at the time of manufacture and use the imperative --"shall," Customs has advised Hager that because of the statutory language in U.S. Code section 1304, it would find marking of the container legally sufficient for these articles.

Hager Hinge was informed of this Customs interpretation when it filed a domestic interested party petition (pursuant to 19 U.S.C. 1516). In that petition, Hager argued that for hinges under Harmonized Tariff Schedule numbers 8302.10.60 and 8302.10.90, marking on the container is legally insufficient. To ensure the information reaches the consumer, the marking should be stamped or etched in the metal on each individual hinge. Customs' response was that even if they did draft regulations requiring individual,

stamped in the metal marking for hinges, they would not take precedence over the container exception of 19 U.S.C. 1304(a)(3). This foreclosed Hager's option for administrative relief because Customs could not require and enforce individual metal marking on each hinge, absent statutory authority. (Precisely the type of statutory authority that was provided for pipe fittings, gas cylinders and manhole rings at 19 U.S.C. 1304(c), (d) and (e), respectively. The magic words are... "no exception may be made under subsection (a)(3)...")

The requirements of H.R. 2426 do not pose an undue burden on importers or foreign manufacturers. Marking hinges by means of die stamping, cast-in-mold-lettering, etching or engraving is not an expensive process, and as evidenced by the market, many manufacturers are already doing it in some form. According to Hager Hinge and other domestic manufacturers who mark their logo and origin in their hinges (both U.S.-origin and imported), the bit required represents a de minimus expense. It is not prohibitively expensive as some importers would have you believe. (The piece necessary -- called a punch or stamp -- can be used to stamp millions of hinges. It costs around $300.) The actual step of stamping the mark into the hinge can be, and most often already is, an integrated part of manufacturing process.

It is particularly disingenuous for importers to claim that marking country of origin on the hinge would be prohibitively expensive when they are already stamping logos in the metal. For example, one importer stamps the word "Virginia" on the front of its hinges and "China" on the back. (When installed, the only ascertainable marking on the hinge will be the word "Virginia," possibly giving the impression that the product is from Virginia, or at least the United States.) This inclusion of country of origin information on the face of the hinge would be a minimal additional expense, if any.

Stamping country of origin information on the face of the hinge neither defaces the product nor harms the integrity of its construction. As evidence, the manufacturers that already stamp on the face of the hinge have not found the strength of the product compromised, nor have buyers declined to purchase other hinges based on the fact that there is a logo or mark stamped on the product.

Hager Hinge believes that enactment of this legislation will provide a level of fairness not now in the market and will clarify the standard for legally sufficient hinge marking for importers and Customs enforcement personnel alike. However, recognizing that there may be situations where such marking may be infeasible, Hager supports the section of the bill that provides an exception to the general hinge marking rule:

> "If, because of the nature of the article, it is technically or commercially infeasible to mark it by 1 of the 4 methods specified in paragraph (1), the article may be marked by an equally permanent method of marking such as paint stenciling or, in the case of door hinges of less than 3 inches in length, by marking on the smallest unit of packaging utilized."

The exception addresses two potential situations: the first is where it is technically or commercially infeasible to mark the hinge. In that case, the hinge may be marked by an equally permanent method of marking, such as paint stenciling. The second situation is where the hinge is less than 3 inches in length when measuring from the top of the pin to the bottom. In that circumstance, the hinge may be marked on the smallest unit of packaging used by the manufacturer or importer. This provides relief for smaller hinges and continues to allow marking on the package. It does, however, still prevent abuse by marking on the case or container which is often separated from the smaller package. Products most likely to fall into the "less than 3 inch" category include most cabinet hinges, many decorative hinges and some of the more unusual hinges (such as toilet seat hinges).

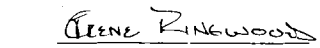
Hager Hinge believes H.R. 2426 provides the right combination of fairness and flexibility for importers and manufacturers. Moreover, if enacted, it will provide purchasers and consumers with a better opportunity to ascertain the origin of a hinge

regardless of where the person is in the distribution chain, or how many hands the hinge had to pass through to get there. The requirements of H.R. 2426 will provide clarity to consumers and a clear enforceable marking standard for importers and the Customs Service. Inasmuch as the majority of today's hinges already have some type of imprint stamped in the metal, this does not represent an outrageous modification. Hager would argue that the potential benefit far outweighs the minimal impact of change.

Hager Hinge, on behalf of itself and others in the domestic hinge industry, appeals to the Subcommittee's sense of fair trade and urges the approval of this legislation.

Should you need any additional information, please do not hesitate to call.

Respectfully submitted:



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SANTO DOMINGO
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March 1, 1996

Hon. Phillip Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Comments of Liberty Hardware Manufacturing Corp. Re HR 2426

Dear Mr. Chairman:

The following comments addressing the proposed statutory changes contained in HR 2426 are filed on behalf of the Liberty Hardware Manufacturing Corporation ("Liberty Hardware"). Liberty Hardware is a Florida corporation which manufactures, both in the United States and abroad, a broad range of hardware products including many types of hinges.

Liberty Hardware believes that the proposed country of origin marking requirements for door hinges contained in HR 2426 should be rejected for several reasons. These requirements are excessive and unnecessary because notification of the country of origin of imported hinges is adequately achieved through markings on the packaging, adhesive stickers, and stencil painting. The primary effect of these requirements would be to place imported hinges at a significant competitive disadvantage by causing the hinges to be defaced and substantially increasing the cost of production. In addition, as the domestic industry is unable to meet the demands of the domestic marketplace, these marking requirements would likely cause a shortage in the availability of quality hinges as certain imported hinges are forced from the marketplace. Furthermore, this issue is currently under review by the United States Customs Service, therefore, action by the Committee at this time would be premature and unnecessary.

The requirements of the current statute provide adequate notification to the end user of the country of origin of imported hinges and should therefore be left unchanged. Consequently, HR 2426 must be rejected.

1. **The Proposed Requirement is Excessive and Unnecessary**

The purpose of country of origin marking on imported products is to provide notification to the end user of the country of origin of the product. The method of marking proposed in HR 2426 is excessive and unnecessary as notification is adequately provided under the current statute and regulations through the use of adhesive stickers, stencil painting, and markings on the packaging. As little or no repackaging is done in the United States due to the expense, country of origin markings on the packaging provides the ultimate purchaser with the required notification. Furthermore, these methods of marking are more appropriate for the products under consideration because they do not deface the hinges and are substantially less expensive than establishing a system for marking hinges by a die sunk, molding or etching process. Consequently, the proposed requirement would be excessive and unnecessary.

American manufacturers such as Liberty Hardware have imported hinges into the United States in compliance with Customs regulations for a number of years. Liberty Hardware has consistently adhered to the current country of origin marking requirements for hinges. All Liberty Hardware packaging clearly states the country of origin. Liberty Hardware believes, therefore, that the current regulations provide adequate notification of the country of origin of hinges to the ultimate purchaser.

2. **Defacement of the Hinge**

Due to the nature of the product, the suggested requirement that imported metal hinges be individually marked with their country of origin by a die sunk, molding or etching process would require the importer to injure the product by defacing it. In addition to their functional purpose, hinges play a significant role in the design and decoration of the end product. For example, hinges are a prominent decorative feature in the design of most cabinets and other furniture. A requirement that the country of origin be die sunk or etched into the face of the hinge would substantially mar the surface of the hinge thus limiting or even eliminating its decorative value.

Products which use this type of marking such as pipes, pipe fittings, gas cylinders, and manhole rings do not have a similar decorative function and are therefore distinguishable from hinges. Furthermore, as imported hinges are incorporated into other domestically produced products, the inclusion of a hinge with a foreign country of origin etched into its face could prove confusing to the purchaser of the domestically produced end product. Hinges defaced in this manner would be of limited value to potential end users and would therefore be generally unmarketable. Consequently, other forms of marking are necessary so that imported hinges may fairly compete in the marketplace.

3. **The Proposed Method of Marking Is Prohibitively Expensive**

To mark each individual hinge with a die sunk, molding or etching process would be prohibitively expensive. Hinges are generally a high volume, low cost product and are very price competitive. A requirement that each individual hinge be marked in this manner would require the manufacturer and/or importer to incur significant additional expenses such as retooling which would substantially increase the price per hinge. Imported hinges, in

addition to being defaced, would thereby be placed at a competitive disadvantage.

4. **Limited Supply of Domestic Hinges**

The U.S. domestic hinge industry is unable to meet the demand for hinges in the domestic marketplace due to limited product lines and lack of innovation. These problems in the industry have led to a decline in the reputation of domestically produced hinges. Only a few types of hinges are produced by domestic manufacturers and most if not all of the innovation in this market has occurred abroad. This is particularly true for door hinges and hinges used in cabinets. For example, cabinetmakers primarily use a type of hinge known as a "European Hinge" which has a variety of features and benefits such as adjustability which are not available in other types of hinges. Domestic hinge manufacturers do not produce this type of hinge nor any equivalent.

The proposed marking requirements would have the effect of driving many types of imported hinges from the marketplace. End users dependant upon imported hinges range from building contractors to cabinetmakers. As the domestic industry is unable to meet the requirements of all of these various end users, the reduction in the supply of quality hinges which would result from these marking requirements would have a negative impact on all of these domestic end users.

5. **U.S. Customs Service Review Is In Progress**

On September 27, 1995, the U.S. Customs Service requested comments (60 FR 49970) on a petition to require that imported metal hinges be individually marked with their country of origin by a die sunk, molding, or etching process. These comments are currently under review and a final decision is pending. Until this petition is ruled upon, any action taken by this Committee on this issue would be premature and potentially duplicative.

Furthermore, the U.S. Customs Service is responsible for the enforcement of the country of origin marking requirements and therefore has broad expertise in this area. With this expertise, Customs is in the best position to make the determination as to the necessity of the proposed marking requirement. The most prudent course of action, therefore, would be to allow Customs to proceed with its review and make a determination on this issue.

6. **Conclusion**

Imported hinges are an important component for a broad range of domestically produced goods ranging from furniture to doors. The proposed marking requirements would have a significant impact on the market for hinges and products which incorporate them, as hinges marred by a permanent marking would be of limited value in such products and would therefore be at a substantial competitive disadvantage.

A requirement that all imported hinges be defaced by having the country of origin marked on them by a die sunk, molding or etching process is unwarranted. The country of origin marking requirements are adequately met by marking the containers or by placing adhesive stickers on the hinges. Consequently, the proposed requirement that all imported hinges be individually

marked with the country of origin by a die sunk, molding or etching process should be rejected.

Liberty Hardware respectfully submits these comments for your consideration. Please contact me if you have any questions or need additional information.

Respectfully submitted,

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WASHINGTON

March 15, 1996

Honorable Philip Crane
Chairman, Subcommittee of Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: HR 2426 — Country of
Origin Markings for Door Hinges

Dear Mr. Chairman:

On March 1, 1996, comments were submitted on behalf of the Liberty Hardware Manufacturing Corporation ("Liberty Hardware") in response to the Subcommittee on Trade's request for comments on HR 2426. Additional information has subsequently come to the attention of Liberty Hardware which the Subcommittee should consider before addressing this issue.

As noted in Liberty Hardware's previous comments, the issue of country of origin marking requirements for hinges is currently before the United States Customs Service. The petitioner, Hager Hinge Company ("Hager Hinge"), filed its Request for Ruling asserting that the country of origin marking should be die sunk, molded or etched on the exposed face of imported hinges. The petitioner claimed that such a requirement was necessary to give the ultimate user the ability to ascertain the origin of the hinge, once installed. This would also be true, however, for several other related hardware products not included in the petition.

Hager Hardware's request for ruling conveniently omits a variety of hardware products, imported by Hager Hinge. These products include:

Steel Sash Locks
Coat and Hat Hooks
Solid Brass Surface Bolts
Solid Brass Chain Door Guards
Handrail Brackets
Flexible Door Stops
Rigid Door Stops
Door Bumpers
Floor Door Stops
Door Guards
Chain Door Guards
Door Viewers
Solid Brass Double Rope Hooks
Ornamental Padlocks
Catches
Extra Heavy Hasps

None of these hardware products currently have the country of origin die sunk, molded or etched on their face. The country of origin is either marked on the back of the item, where it cannot be viewed once installed, or on the packaging. Furthermore, many of these hardware products are classified under Harmonized Tariff Schedule ("HTS") numbers 8302.10.60.30 and 8302.10.90.30. These are the same HTS numbers under which door hinges are classified when imported into the Unites States.

Identifying the country of origin on the packaging or with a mark on the back of the product has proven to be an effective means of providing the end user with the required notification for all of these products, including hinges. To single out hinges from this group of hardware products for more onerous treatment would be both unfair and unnecessary. Consequently, the Subcommittee on Trade should reject HR 2426 and retain the current country of origin marking requirements.

Liberty Hardware respectfully submits these supplemental comments for your consideration. Please contact me if you have any questions or need additional information.

Respectfully submitted,

V. James Adduci, II
Michael L. Doane
Adduci, Mastriani & Schaumberg, L.L.P.
1140 Connecticut Avenue, N.W.
Suite 250
Washington, D.C. 20036
(202) 467-6300

Counsel for Liberty Hardware
Manufacturing Corporation

The PENROD *Company*

2809 S. LYNNHAVEN RD. • SUITE 350 • VIRGINIA BEACH, VA 23452 • Ph. (804) 498-0186
POST OFFICE BOX 2100 • VIRGINIA BEACH, VA 23450
FAX (804) 498-1075 TELEX (WU) 823624 Answer Back-PENROD USA

February 9, 1996

The Honorable Owen B. Pickett
2430 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Re: Tariff Act of 1930
H.R. 2426

Dear Owen:

It's come to our attention that Congressman Philip Crane who is the Chairman of the Sub-Committee on Trade of the Committee on Ways and Means, is requesting comments on various trade proposals. Recently, we have had a number of discussions with respect to issue No. 4, (H.R. 2426) with U.S. Customs. Simply stated, it is our feeling that the current labeling laws are more than satisfactory in their present state. (Please see the attached correspondence to U.S. Customs.)

I hope after reading the attached, you will agree and help persuade Congressman Crane that H.R. 2426 is an unnecessary and expensive legislative proposal.

Best regards,

Very truly yours,

Edward A. Heidt, Jr.
President

Enc.

The PENROD Company
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November 22, 1995

U.S. Customs Service, Regulations Branch
Office of Regulations and Rulings
1301 Constitution Avenue, N.W. (Franklin Court)
Washington, D.C. 20229

Dear Sir or Madam:

The Penrod Company is a corporation based in Virginia Beach, Virginia that imports into the United States metal hinges of the type referred to in the petition of Hager Hinge Company, summarized in the Federal Register of Wednesday, September 27, 1995 at page 49971.

Although the comments of other interested parties concerning the petition may make additional valid points, Penrod requests that Customs consider the following comments:

1. The metal hinges currently being imported by Penrod into the United States are typically stamped already with the county of origin on the back side of each hinge. In that this stamp will survive normal distribution and store handling, such marking is as conspicuous, legible, indelible and permanent as is required under 19 U.S.C. - 1304 and the Customs regulations thereunder. See 19 C.F.R. - 134.41 (b). As a result of this stamping, domestic purchasers of these hinges are fully apprised of the country of origin.

2. With respect to hinges distributed for sale in hardware stores, it is important to recognize that, in addition to the conspicuous country of origin stamp on the back of each hinge, the retail packages also bear the required country of origin label. These hinges are typically sold in "blister packs", with the country of origin label conspicuously displayed on the front of the package. Occasionally, the hinges may be sold in boxes, small cartons or nylon bags - in each case the container conspicuously declares the country of origin.

Penrod is not aware of any of the hinges it imports being removed from such packages and dumped into an unlabeled bin or other container for resale to consumers. The plating on most hinges will not withstand the rubbing and grinding that would occur in such bins. Moreover, hinges are normally purchased in pairs, and removal from their blister packs, boxes or nylon bags would cause consumers to take mismatched sets. Significantly, the petitioner has clamed only that retailers of hinges "may" remove the hinges from their correctly labeled packages, but there is no evidence that this occurs to any significant extent, nor does it make any sense for it to occur.

The provisions of 19 C.F.R. - 134.26 furnish ample protection from any risk that hinges will be removed from their normal packages and repackaged in unlabeled bins. If Customs had reason to believe that these articles were to be removed from their properly marked containers after importation, then Customs could require the importer to notify its purchasers and transferees of the county of origin requirements, and the importer could further be required to certify compliance with these notice requirements. Failure to comply with the certification requirements could subject the importer to liquidated damages under 19 C.F.R. - 134.54 (a) and to additional duty under 19 U.S.C. - 1304. Consequently, adequate means of enforcement are already in place should the petitioner ever establish a factual basis for its "bin hypothesis", an unlikely event in that it is not commercially practicable to sell hinges (i) in single units outside their normal containers in which they are paired or (ii) loose in bins, where damage to the hinges would likely result.

3. As for sales of the metal hinges in bulk to contractors in the building trades, it is important to note that the packages containing the hinges - master cartons of approximately 24 pairs and inner cartons of one or two pairs - conspicuously carry the required country of origin labels. Moreover, these hinges are often wrapped in nylon, which itself is stamped with the country of origin marking. And, of course, the hinges themselves also conspicuously bear the country of origin on the back side of each hinge.

Contractors purchase hinges in order to assemble the ultimate product, a door and door frame, for insertion into the home or other building being constructed. By incorporating the hinges into the production of a new and final article - the door and door frame - the contractor clearly becomes the "ultimate purchaser" for purposes of the country of origin marking rules. See 19 C.F.R. - 134.1 (d). Importantly, the petitioner does not assert that these ultimate purchasers, the contractors, are not shown the country of origin of the hinges they purchase and then incorporate into their manufactured products.

The applicable regulations make clear that the manufacturer (contractor) is considered the "ultimate purchaser" whenever the imported article is substantially transformed after importation. Clearly, the assembly of the door and door frame substantially transforms the various parts - doors, door jambs, hinges and other parts - into a different final product for use by the home buyer or other building end-user.

4. Even if the ultimate home buyer or the other end-user of a building constructed by a contractor were considered the "ultimate purchaser" for purposes of the country of origin rules, the Customs regulations would not require the type of markings set by the petition in this matter.

A home buyer or other end-user of a building utilizing door hinges does not typically seek to determine the country of origin of the door hinges any more than the country of origin of the sheetrock or drywall used to build the walls, the insulation or electrical wiring placed in the walls, the nails and screws holding together the framing, the foundation materials undergirding the building, or even the carpet or subflooring installed underfoot. To pick out hinges for special treatment is discriminatory and nonsensical. Homeowners and other end-users do not want country of origin markings blaring from the front of their door hinges any more than they want country of origin markings installed on their floors, walls and ceilings to indicate the source of each surface or subsurface material. Such markings would deface and substantially detract from the value of each of the materials used in the construction of the home or other building.

Under 19 C.F.R. - 134.32 (g), it is contemplated that no country of origin markings needs to be placed on items such as nails, screws, bracings, foundations, subflooring, carpets, walls, ceilings and hinges because such marks are necessarily obliterated or permanently concealed in the process of constructing the home or other building.

Indeed, under 19 C.F.R. - 134.32 (b), it would be appropriate to point out that metal hinges, much like these other items, cannot be marked on their exposed side without injury to the item in the minds of home buyers and other end-users, who have exhibited no desire to pin country of origin labels on their doors, floors, walls and ceilings: to grant the petition would be to foist upon them a mark that defaces, and therefore injures the value of, the home or other building they are acquiring.

Nothing in the country of origin law or regulations authorize Customs to impose the marking requirements sought by petitioner solely for the purpose of assisting petitioner's "buy domestic" marketing plan. Petitioner has neither established a violation of law nor the lack of means to enforce current law. The petition is simply an impermissible effort to create nontariff barriers to United States imports.

5. Penrod reserves the right to supplement these comments should further relevant information come to its attention.

Very truly yours,

Edward A. Heidt, Jr.
President

H.R. 2615

To suspend temporarily the duty on dichlorofopmethyl.

H.R. 2616

To suspend temporarily the duty on thidiazuron.

STATEMENT BY AGREVO USA COMPANY IN SUPPORT OF H.R. 2615 AND H.R. 2616

AgrEvo USA Company ("AgrEvo") appreciates the opportunity to submit to the Subcommittee on Trade of the Committee on Ways and Means of the United States House of Representatives the following statement in support of H.R. 2615 and H.R. 2616.

I. The Purpose of H.R. 2615 and H.R. 2616

H.R. 2615 (pertaining to AgrEvo's agricultural chemical products containing thidiazuron) and H.R. 2616 (pertaining to AgrEvo product containing dichlorofopmethyl) would suspend on a temporary basis the import duty on thidiazuron and dichlorofopmethyl (in bulk and packaged form). These bills have the support of Zeneca, Inc. and American Cyanamid Company, respectively, domestic competitors of AgrEvo, and are non-controversial.

II. Background

AgrEvo USA Company ("AgrEvo") is involved in the manufacture, distribution and sale of proprietary and patented agrochemical products including a wide range of herbicides, insecticides and fungicides. These products are designed to assist American farmers in dealing with various weed species, crop-damaging insects and other threats to crop yield and product quality and are used in a wide variety of crops, including tree fruit, sugar beets, cotton and cereals. Other important applications for AgrEvo's products are in the area of vector control of public health hazards, such as insects.

AgrEvo and its predecessors in interest have been in the agricultural chemicals business for many decades. AgrEvo operates a formulation facility in Muskegon, Michigan, laboratory facilities in Goldsboro, North Carolina, product testing farms in three states, regional and sales offices in four states and a corporate headquarters in Wilmington, Delaware. AgrEvo's products are sold in all fifty states.

III. The Need for Duty Exemption for Thidiazuron and Dichlorofopmethyl

The agrochemical business in the United States is fiercely competitive. The temporary suspension of these duties would allow AgrEvo to compete in the marketplace more effectively by reducing the Company's production costs; additionally, it would permit the Company to spend more money on product development and on human resources and plant enhancement.

IV. Thidiazuron and Dichlorofopmethyl: The Products and Their Utility

***Thidiazuron**

AgrEvo's product thidiazuron is registered with the U.S. Environmental Agency and cannot be sold in the United States without such registration. AgrEvo currently sells

two products containing thidiazuron, DROPP® 50 WP and GINSTAR® EC. (The EPA-approved labels for these products are attached at Exhibit 1.)

Thidiazuron is used to defoliate cotton to allow for more timely harvest, thus helping to insure a higher realized yield by the farmer and to preserve the optimum quality of the crop. One of AgrEvo's thidiazuron-based products, aptly named "DROPP®", causes green cotton bolls to drop to the ground, thereby enabling cotton pickers to enter fields and harvest cotton without green stain which diminishes the value of the crop. Thidiazuron has several other salutary effects. It inhibits regrowth in the cotton plant, thus obviating the need for application of other defoliants and desiccants which do not offer re-growth inhibition. Because thidiazuron causes the cotton plant to shed immature bolls, it removes host sites which provide infestation opportunities for boll weevils, which are a major threat to cotton production. AgrEvo imports thidiazuron in already-formulated and packaged form.

AgrEvo spends a considerable amount of money in product development and is also in the process of providing product upgrades to farmers and growers through new thidiazuron tradenames such as GINSTAR® and DROPP® ULTRA. Additionally, AgrEvo would like to move the thidiazuron formulation and packaging work to facilities in the United States. These developments would yield additional revenues for state and federal coffers attributable to increased employment opportunities and the generation of sales and use taxes. Additionally, AgrEvo has conducted field development trials in the south and has done extensive formulation development and packaging work at its research facility in Goldsboro, North Carolina in an effort to improve the competitive position of thidiazuron within the United States.

In addition to enhanced agronomic and economic benefits attributable to performing formulating and packaging functions for thidiazuron in the United States, there are also environmental benefits attributable to the use of thidiazuron. Continued investment in improved formulation of thidiazuron has enabled AgrEvo to project that farmers and growers will be able to obtain excellent agronomic results while using substantially less active ingredient. The Company estimates that for each one million acres treated with thidiazuron, there will be a reduction in environmental load by 700,000 pounds of active ingredient. Also, the future introduction of thidiazuron packaged in water-soluble bags will reduce potential dermal exposure claims of operators, with concomitant savings to such operators.

In order for AgrEvo to continue its work in product formulation and packaging advances in the United States, it needs to improve its competitive position in the marketplace. The elimination of import duties on a temporary basis would enable AgrEvo to continue such work and would thus lower the cost of products to growers and

farmers throughout America and provide opportunities for additional production enhancements and environmental savings as well.

***Dichlorofopmethyl**

Dichlorofopmethyl is an active ingredient used as an herbicide for post-emergence control of grassy weeds for spring/winter wheat production (including durum wheat) and for barley, in particular. For example, in California and in the Pacific Northwest, the growth of annual rye-grass poses a significant threat to profitable wheat production. AgrEvo's product HOELON® 3EC, containing dichlorofopmethyl as active ingredient, is the only product available on the market that offers a solution to farmers for annual rye-grass control. (The EPA-approved label for this product is attached at Exhibit 2.)

Another significant agronomic advantage of the use of dichlorofopmethyl is in the area of soil conservation. Soil erosion is a major problem in the United States. The Department of Agriculture and its ASCS Service have studied soil conservation issues for many years. Because many products currently on the market require mechanical incorporation in the soil, they thereby leave the soil open to wind and water erosion and loss of valuable nutrients and moisture to the environment. Because dichlorofopmethyl is applied without tillage or other mechanical incorporation devices, it provides a mechanism for farmers to control weeds that threaten their yields, but also does so in a manner which effectively promotes soil conservation. The reduction of duties on the importation of dichlorofopmethyl will enable farmers to reduce their costs of production while enhancing soil conservation and farming efficiencies.

VII. The Benefits of Tariff Removal

In a larger competitive sense, removing extremely costly import tariffs on thidiazuron and dichlorofopmethyl will provide greater flexibility for AgrEvo to utilize its production facility in Muskegon, Michigan to formulate new products at that facility. The AgrEvo facility in Muskegon was the beneficiary of past duty exemption legislation which enabled the plant to maintain a stable and growing work force. In fact, AgrEvo is in the process of negotiating a multi-million dollar investment for its Muskegon, Michigan facility which will permit it to expand into the production of other proprietary products. Duty exemption for thidiazuron and dichlorofopmethyl could serve as a substantial enhancement to AgrEvo to perform formulation work at its Muskegon facility for these products and thus further enhance the competitive viability - and longevity- of that facility.

Additionally, the projected savings on the reduction of import duties for these products will enable AgrEvo to engage in enhanced product formulation and metabolic testing functions for these and other products at its Goldsboro

facility, thus enhancing its viability and utility to AgrEvo-- and to the community of Goldsboro.

VIII. Summary

In summary, the temporary elimination of import tariffs on thidiazuron and dichlorofopmethyl would enable AgrEvo to shore up its competitive footing in the industry, produce product on a more cost-efficient basis and help generate farming efficiencies. Additionally, it would permit AgrEvo to better utilize and expand its production facilities at Muskegon, Michigan and at its testing facilities in Goldsboro, North Carolina, conserving, and possibly promoting, employment opportunities at those facilities.

Respectfully submitted,

AgrEvo USA Company

By Kenneth D. Morris

AgrEvo™

Specimen Label

A company of Hoechst and NOR-AM

ACCEPTED
with COMMENTS
In EPA Letter Dated
MAY 23 1995

Under the Federal Insecticide, Fungicide, and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 45639-89

FOR AGRICULTURAL USE ONLY

Dropp® 50WP

COTTON DEFOLIANT

EPA Registration Number 45639-89

For Agricultural Use Only

Dropp® 50WP

COTTON DEFOLIANT

Packed In Water Soluble Bags

ACTIVE INGREDIENT:	
Thidiazuron*	50%
INERT INGREDIENTS:	50%
TOTAL	100%

*N-phenyl-N'-1,2,3-thiadiazol-5-ylurea

EPA Reg. No. 45639-89
EPA Est. No. 33689-WG-1

U.S. Patent No. 4,294,605

KEEP OUT OF REACH OF CHILDREN
CAUTION — CAUCION

STATEMENT OF PRACTICAL TREATMENT

IF SWALLOWED: Call a physician or poison control center. Drink 1 or 2 glasses of water and induce vomiting by touching back of throat with finger. Do not induce vomiting or give anything by mouth to an unconscious person.

IF INHALED: Remove person to fresh air.

IF IN EYES: Flush with plenty of water for fifteen minutes.

IF ON SKIN: Wash with plenty of soap and water.

This box contains DROPP® 50WP in water soluble bags. Inner bags dissolve in water and contents disperse. After opening outer box, open foil liner, immediately dump entire unopened inner bags into the mix tank. Do not handle soluble bags or expose them to moisture, since this may cause breakage.

SEE SIDE PANELS FOR ADDITIONAL PRECAUTIONARY STATEMENTS

IN CASE OF MEDICAL EMERGENCIES OR HEALTH AND SAFETY INQUIRIES, *OR* IN CASE OF FIRE, LEAKING, OR DAMAGED CONTAINERS, INFORMATION MAY BE OBTAINED BY CALLING 800-228-5635, EXT. 202.

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
CAUTION

Harmful if Swallowed, Inhaled, or Absorbed Through the Skin. Avoid Breathing Spray Mist. Avoid Contact with Skin, Eyes, and Clothing. Do Not Contaminate Food or Feedstuffs.

PERSONAL PROTECTIVE EQUIPMENT

Applicators and other handlers must wear:

- Long-sleeved shirt and long pants
- Waterproof gloves
- Shoes plus socks

Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

ENGINEERING CONTROLS STATEMENT

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240 (d) (4–6)], the handler PPE requirements may be reduced or modified as specified in the WPS.

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.

ENVIRONMENTAL HAZARDS

Do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwaters. Do not apply when weather conditions favor drift from target area.

STORAGE AND DISPOSAL

STORAGE: Do not store box under wet conditions. Handle box carefully when stored at temperatures of less than 50°F to avoid breakage of soluble bags.

PESTICIDE DISPOSAL: Do not contaminate water, food or feed by storage or disposal. Wastes resulting from the use of this product may be disposed of on site or at an approved waste disposal facility.

CONTAINER DISPOSAL: Completely empty box into application equipment. Then dispose of empty box in a sanitary landfill or by incineration, or, if allowed by State and local authorities, by burning. If burned, stay out of smoke.

DO NOT REUSE EMPTY CONTAINER.

GENERAL INFORMATION

DROPP® 50WP cotton defoliant is used for removal of leaves prior to harvesting. DROPP disperses easily in water and can be used in any ground and aircraft equipment designed for application of wettable powders. It may take several days before the effect of DROPP becomes noticeable. Adverse conditions, such as low temperatures, may require higher dosages and/or longer times for more complete defoliation. DROPP inhibits regrowth after defoliation and thus reduces staining of lint during harvesting and ginning.

USE PREC. ,TIONS

Do not apply this product through any type of irrigation system.

Rainfall within 24 hours after application will reduce the effectiveness of DROPP. Use only freshly prepared sprays. Do not store spray mixture overnight.

Do not feed foliage from treated cotton plants or gin trash to livestock.

Do not plant the following crops **earlier than** the specified periods after the application of DROPP 50WP:

Small grain, sorghum, corn ..... two (2) weeks
or root crops (except carrots, onions, and sugar beets)

Legumes (including alfalfa) ..... two (2) months
or leafy vegetables (except lettuce and spinach)

Sugar beets ..... four (4) months

Carrots, onions, or spinach ..... nine (9) months

Lettuce ..... nine (9) months
and only following deep plowing (12–15 inches).

Do not use immature crops for food or feed.

Do not allow spray drift to contact crops other than the target crop of mature cotton, or cotton which you desire to defoliate, as this product may injure or defoliate other crops.

Particular care should be taken when applying DROPP 50WP adjacent to lettuce, citrus, or cantaloupe. Tank-mixes with organophosphates may increase nontarget crop phytotoxicity.

PRACTICES TO LOWER THE POTENTIAL FOR DRIFT ONTO NON-TARGET CROPS

During applications, particularly under windy conditions, DROPP 50WP may drift to nontarget crops.

To help reduce the drift potential, use the following practices:

- Do not apply DROPP 50WP by ground or air when wind speeds exceed ten (10) miles per hour at the time of application. Follow local recommendations if wind speeds of less than ten (10) miles per hour are specified in those recommendations.
- Use of low nozzle pressure (20–30 psi) is recommended.
- Do not apply DROPP 50WP when a temperature inversion is present or when conditions favor an inversion prior to completing application(s).
- Additionally, do not apply DROPP 50WP by air within one-half (½) mile of lettuce. Do not apply DROPP 50WP by ground equipment within 100 feet of lettuce.

PRACTICES TO LOWER DRIFT POTENTIAL ONTO NON-TARGET CROPS IN THE RIO GRANDE VALLEY OF TEXAS

To help reduce the drift potential, use the following practices:

- Do not apply DROPP 50WP by ground or air when wind speeds exceed ten (10) miles per hour at the time of application. Follow local recommendations if wind speeds of less than ten (10) miles per hour are specified in those recommendations.
- Use of low nozzle pressure (20–30 psi) is recommended.
- Do not apply DROPP 50WP when a temperature inversion is present or when conditions favor an inversion prior to completing application(s).
- Use the largest nozzle orifice possible which permits proper deposition and coverage of product.
- In addition, for citrus crops, do not apply DROPP 50WP by air when citrus in flush is within five (5) miles downwind of the point of application. Do not apply DROPP 50WP by ground when citrus in flush is within one-half (½) mile downwind of the point of application.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 24 hours.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is:

- Coveralls
- Waterproof gloves
- Shoes plus socks

Refer to supplemental labeling for important additional use directions. Applicable supplemental labeling must be in the possession of the user at the time of application.

TIME OF APPLICATION

Apply DROPP 50WP cotton defoliant only to mature cotton plants when the last boll you expect to harvest is mature. A boll can be described as "mature" when it is too hard to be dented when squeezed between thumb and fingers, is difficult to slice with a sharp knife, and/or when seeds cut in cross sections have fully developed cotyledons, as evidenced by an absence of jelly within the seed.

Apply DROPP 50WP at least 5 days prior to anticipated harvest.

NOTE: Good defoliation with DROPP is dependent upon three factors:

1. Actively growing cotton
2. High humidity
3. High moisture content in leaf of cotton plant

Use of DROPP 50WP alone (without a tank-mix partner) when nighttime temperatures are expected to fall below 60°F can result in less than desirable defoliation and/or regrowth inhibition.

Performance of DROPP 50WP is variable under low temperatures. Ideally, nighttime temperatures 2–3 days prior to and following application should be above 60°F or total defoliation and regrowth inhibition can be reduced.

Use of DROPP 50WP on heat and drought-stressed cotton (low leaf moisture, thick cuticle, etc.) may result in less than satisfactory defoliation and regrowth inhibition.

USE OF ADJUVANTS (CROP OILS)

The use of adjuvants such as petroleum-based crop oils or penetrating oils approved for use on growing crops have been shown to improve performance during low nighttime temperatures (60°–65°F) or when defoliating drought-stressed cotton. Refer to specific adjuvant label for rate recommendations.

The use of adjuvants are recommended when applying DROPP 50WP in the desert Southwest (i.e., Arizona and California).

CAUTION: The addition of adjuvants can cause desiccation and/or leaf freezing during periods of high temperatures. The use of compounds that desiccate leaf tissue is not recommended.

MIXING INSTRUCTIONS

Fill the spray tank with one-half of the total amount of water to be used. After opening each box to be used, open its foil liner. Immediately dump the entire contents of the required number of boxes of soluble bags into the mix tank. Fill the tank with the additional quantity of water required and then start the agitator. Use entire contents of each box.

TANK-MIX ADJUVANTS

When using tank-mixes of DROPP 50WP and organophosphates, the use of a surfactant or compatibility agent is recommended to improve tank clean-out and overall defoliation. Prior to mixing in the spray tank, a small scale compatibility test should be conducted.

Use only products which are exempt from tolerance under 40 CFR 180.1001.

Always follow the mixing instructions on the label of the appropriate adjuvant.

APPLICATION

Use the specified dosage of DROPP 50WP cotton defoliant in sufficient amount of water to give complete coverage of the foliage with uniform wetting of leaf surfaces. Agitate the spray mix during application.

DOSAGE

One box (5 x 1lb bags) of DROPP treats 12.5–25 acres (0.2–0.4lbs DROPP per acre). Apply in 10–25 gallons of spray per acre by ground equipment and 2–10 gallons per acre by air. Use the higher rates during periods of low temperatures (60°–65°).

Two applications not exceeding a total of 1 box per 8.3 acres (0.6 lbs./acre) may be necessary to defoliate rank cotton.

BOTTOM DEFOLIATION FOR USE IN ARIZONA ONLY: DROPP 50WP may be used as an aid to improve air circulation and help reduce boll rot caused by moisture.

Apply DROPP 50WP at 0.1 lbs. formulated product per acre in 10–25 gallons of water per acre.

Application to **bottom** ⅓ of plant **only** recommended.

Timing of application should be based upon the latest date when ground application equipment can enter the field without crop damage.

PRECONDITIONING FOR USE IN ARIZONA AND CALIFORNIA ONLY: DROPP 50WP may be used as a pre-conditioner to enhance the activity of a defoliant application.

Apply DROPP 50WP at 0.1–0.2 lbs. formulated product per acre. Apply in 10–25 gallons of water per acre by ground application or 2–10 gallons of water per acre by aerial application.

Timing of application is recommended to be 7–14 days prior to the use of another defoliant. Refer to the second product label prior to use for complete recommendations.

TANK-MIX OF DROPP® 50WP PLUS PREP[1] FOR BOLL OPENING: The tank-mix of DROPP 50WP plus Prep® is recommended to improve overall defoliation, and as an aid in accelerating the opening of mature, unopened cotton bolls. Best activity will be obtained where the tank-mix is applied to mature cotton plants. (See Time Of Application section of this label.) Do not apply tank-mix before sufficient unopened bolls have matured to produce the desired cotton yield. If nighttime temperatures are expected to fall below 60°F, unsatisfactory defoliation and regrowth inhibition may result. Certified cotton seed producers should determine boll and seed maturity prior to treatment.

Apply DROPP 50WP at a rate of 0.1–0.4 lbs. formulated product plus Prep at 1.0–2.0 lbs. active ingredient per acre. The higher rate of DROPP should be used where excessive regrowth is anticipated, or during cooler temperatures.

Apply as a dilute spray as follows:

Application Method	Gallons of Water/Acre
Aerial	2-10
Ground	10-50

TANK-MIX OF DROPP 50WP PLUS PREP FOR DEFOLIATION ENHANCEMENT: Lower rates of Prep may be tank-mixed with DROPP 50WP to enhance defoliation without providing boll opening activity. Prep may still be applied as a sequential treatment for boll opening following an application of DROPP 50WP plus Prep at a defoliation enhancement rate. Read and follow the Prep label, and do not exceed a maximum of 2.0 lb. ai/acre for combined uses of PREP per acre per year.

Apply DROPP 50WP at a rate of 0.1–0.4 lbs. formulated product plus Prep at ½ pint per acre (0.25 lbs. ai/acre). The higher rates of DROPP 50WP should be used where excessive regrowth is anticipated, or during cooler temperatures.

TANK-MIX OF DROPP 50WP PLUS DEF 6[2] OR DROPP 50WP PLUS FOLEX 6EC[3]: The tank-mix of DROPP 50WP and Def® 6 or Folex® 6EC is recommended to improve defoliation and inhibit regrowth under less than ideal conditions. Less than ideal conditions are those when the nighttime temperatures are expected to be 60°F on the date of application and for three days following application.

Best activity will be obtained when the tank-mix is applied to mature cotton plants with 60% or more open bolls.

RATE OF APPLICATION

DROPP 50WP + Def 6 = Use 0.1–0.4 lbs DROPP 50WP + 0.5–2.0 pints Def 6

DROPP 50WP + Folex 6EC = Use 0.1–0.4 lbs DROPP 50WP + 0.5–2.0 pints Folex 6EC

Higher rate of DROPP 50WP should be used where excessive regrowth is anticipated.

Maximum rates of DROPP and phosphate defoliants applied in a tank-mix during very high air temperatures can cause desiccation .

Use lower rate of Def 6 or Folex 6EC under ideal nighttime temperature conditions (65°F); higher rate during less than ideal or adverse conditions.

Apply as a dilute spray in 5–10 gallons of water per acre by air or 10–25 gallons of water per acre with ground equipment.

When applying Def 6 or Folex 6EC defoliant plus DROPP 50WP as a tank-mix, the following mixing sequence is recommended:

1. Add required water to spray tank, agitate.
2. Add DROPP 50WP according to label directions (see **mixing instructions**).
3. Add Def 6 or Folex 6EC according to rate desired **after** the DROPP 50WP has completely dispersed.

A second application of the labeled tank-mix may be made where necessary, but not exceeding a total of 0.6 lbs DROPP per acre.

Refer to Def 6 and Folex 6EC labeling for additional use directions and cautions when using tank-mixtures of DROPP 50WP and those products.

DO NOT USE TANK-MIX OF DROPP 50WP PLUS DEF 6 OR FOLEX 6EC IN THE RIO GRANDE VALLEY COUNTIES OF STARR, HIDALGO, WILLACY, AND CAMERON.

IMPORTANT CLEANOUT INSTRUCTIONS

Tank-mixes of DROPP 50WP with organophosphates may form a residue in application equipment. **While still fresh and moist,** this residue can be removed by flushing the entire system with a commercial tank cleaner. Refer to AgrEvo technical information bulletins for recommended tank cleaners which have been found to effectively remove these **fresh residues.****

Do not allow the spray solution to dry in the application equipment. Immediately following application, clean all equipment (mix tanks, pumps, transfer lines, application tanks, sumps, booms, nozzles and all related equipment) thoroughly with cleaner and water.

Should small quantities of DROPP 50WP remain in inadequately cleaned equipment, they may be released during subsequent applications and may cause damage to crops. AgrEvo USA Company accepts no liability for damage to crops due to inadequately cleaned equipment.

SEQUENTIAL APPLICATION PRECAUTION

Do not apply sequential application of DROPP 50WP following any defoliant or desiccant **except** DROPP 50WP used alone or DROPP 50WP tank-mixes. Reduced activity of the second treatment will result.

[1] Prep is a trademark of Rhone-Poulenc, Inc.
[2] Def 6 is a registered trademark of Miles Chemical Corporation, Agricultural Chemical Division.
[3] Folex 6EC is a registered trademark of Rhone-Poulenc, Inc., Agrochemical Division.

**In limited trials, the recommended cleaners have shown promise in cleaning dried tank residues. The procedure for removing dried residues requires allowing the diluted cleaning solution to stand in equipment, filled to capacity, for 7 days followed by thorough flushing.

IMPORTANT: READ BEFORE USE

By using this product, user or buyer accepts the following conditions, warranty, disclaimer of warranties and limitations of liability.

CONDITIONS: The directions for use of this product are believed to be adequate and should be followed carefully. However, because of extreme weather and soil conditions, manner of use and other factors beyond AgrEvo USA Company's control, it is impossible for AgrEvo USA Company to eliminate all risks associated with the use of this product. As a result, crop injury or ineffectiveness is always possible. All such risks shall be assumed by the user or buyer.

DISCLAIMER OF WARRANTIES: THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE STATEMENTS MADE ON THIS LABEL. No agent of AgrEvo USA Company is authorized to make any warranties beyond those contained herein or to modify the warranties contained herein. AgrEvo USA Company disclaims any liability whatsoever for incidental or consequential damages, including, but not limited to, liability arising out of breach of contract, express or implied warranty (including warranties of merchantability and fitness for a particular purpose), tort, negligence, strict liability or otherwise.

LIMITATIONS OF LIABILITY: THE EXCLUSIVE REMEDY OF THE USER OR BUYER FOR ANY AND ALL LOSSES, INJURIES OR DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID, OR AT AGREVO USA COMPANY'S ELECTION, THE REPLACEMENT OF PRODUCT.

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Worker Protection Standard
WPS
Product labeling includes wording required by Worker Protection Standard

AgrEvo USA Company
Agribusiness
Little Falls Centre One
2711 Centerville Road
Wilmington, DE 19808

DWP-(C2934)-(D950131)-Reg. 1/95

AgrEvo™

Specimen Label

A company of Hoechst and NOR-AM

FOR AGRICULTURAL USE ONLY

Ginstar® EC

DEFOLIANT

ACCEPTED
with COMMENTS
In EPA Letter Dated
APR 5 1995

Under the Federal Insecticide, Fungicide, and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 45639-161

EPA Registration Number 45639-161

For Use Only in AL, AR, AZ, CA, FL, GA, KS, LA, MD, MO, MS, NC, NM, OK, SC, TN, TX, and VA.

For Agricultural Use Only

Ginstar® EC

COTTON DEFOLIANT

For Use Only in AL, AR, AZ, CA, FL, GA, KS, LA, MD, MO, MS, NC, NM, OK, SC, TN, TX, and VA

ACTIVE INGREDIENTS:	Percent by Weight
Thidiazuron:	
N-phenyl-N'-1,2,3-thidiazol-5-ylurea	12%
Diuron:	
3-(3,4-dichlorophenyl)-1,1-dimethylurea	6%
INERT INGREDIENTS:	82%
TOTAL	100%

Contains 1 lb. Thidiazuron per gallon and 0.5 lb. Diuron per gallon.

EPA Reg. No. 45639-161

EPA Est. No. 407-MN-1

U.S. Patent Nos. 4,294,605 and 4,613,354

KEEP OUT OF REACH OF CHILDREN
DANGER — PELIGRO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.

(If you do not understand this label, find someone to explain it to you in detail.)

STATEMENT OF PRACTICAL TREATMENT

IF ON SKIN: Wash with plenty of soap and water. Get medical attention if irritation persists.

IF IN EYES: Hold eyelids open and immediately flush with a steady, gentle stream of water for at least 15 minutes. Call a physician.

IF INHALED: Remove victim to fresh air. If not breathing, give artificial respiration, preferably mouth-to-mouth. Get medical attention.

IF SWALLOWED: Do not induce vomiting. Drink promptly a large quantity of milk, egg white, gelatin solution, or, if these are not available, large quantities of water. Avoid alcohol. Call a physician immediately.

NOTE TO PHYSICIAN: Probable mucosal damage may contraindicate use of gastric lavage.

IN CASE OF MEDICAL EMERGENCIES OR HEALTH AND SAFETY INQUIRIES, *OR* IN CASE OF FIRE, LEAKING, OR DAMAGED CONTAINERS, INFORMATION MAY BE OBTAINED BY CALLING 800-228-5635, EXT. 202.

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
DANGER

Corrosive. Causes irreversible eye damage. Causes burns. Harmful if inhaled. Do not get in eyes, on skin, or on clothing. Avoid breathing dust or spray mist. Prolonged or frequently repeated skin-contact may cause allergic reactions in some individuals.

PERSONAL PROTECTIVE EQUIPMENT

Applicators and other handlers (other than mixers and loaders) must wear:

- Coveralls worn over long-sleeved shirt and long pants
- Chemical-resistant gloves, such as barrier laminate or butyl rubber gloves
- Chemical-resistant footwear plus socks
- Protective eyewear

Mixers and loaders must wear:

- Coveralls worn over long-sleeved shirt and long pants
- Chemical-resistant gloves such as barrier laminate or butyl rubber gloves
- Chemical-resistant footwear plus socks
- Protective eyewear

Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them. Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

ENGINEERING CONTROLS STATEMENT

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240 (d) (4–6)], the handler PPE requirements may be reduced or modified as specified in the WPS

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco, or using the toilet.
- Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

ENVIRONMENTAL HAZARDS

Do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not contaminate water by cleaning of equipment or disposal of equipment washwaters. Do not apply when weather conditions favor drift from the target area.

STORAGE AND DISPOSAL

STORAGE: Store in original container and keep closed. Store in a cool, dry place. Do not use or store near heat or open flame. Do not contaminate food or foodstuffs.

PESTICIDE DISPOSAL: Do not contaminate water, food, or feed by storage or disposal. Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste Representative at the nearest EPA Regional Office for guidance.

CONTAINER DISPOSAL: Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in sanitary landfill, or by other procedures approved by state and local authorities.

PHYSICAL OR CHEMICAL HAZARDS

Do not use or store near heat or open flame.

In case of spillage, cover with an absorbent such as soda ash, lime, clay, or sawdust. Sweep up and bury. Wash area thoroughly with detergent and water.

DO NOT REUSE EMPTY CONTAINER

GENERAL INFORMATION

GINSTAR® EC is a defoliant to be used as a pre-harvest aid for cotton. GINSTAR EC has performed well under both cool and warm weather conditions.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard 40 CFR Part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 24 hours.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is:

- Coveralls worn over long-sleeved shirt and long pants
- Chemical-resistant gloves such as barrier laminate or butyl rubber gloves
- Chemical-resistant footwear plus socks
- Protective eyewear

Refer to supplemental labeling for important additional use directions. Applicable supplemental labeling must be in the possession of the user at the time of application.

USE PRECAUTIONS

Do not apply this product through any type of irrigation system.

Do not feed foliage from treated cotton plants or gin trash to livestock.

Do not plant the following crops **earlier than** the specified periods after application of GINSTAR EC:

small grains, sorghum, corn, ... two (2) months
or root crops (except carrots, onions)

legumes (including alfalfa), ... two (2) months
or leafy vegetables (except lettuce)

cole crops, garlic, safflower, ... two (2) months
tomatoes and watermelon.

carrots ..... three (3) months

onions ..... four (4) months

cantaloupe, honeydew melon/..... five (5) months
casaba melon, muskmelon, and peppers

lettuce ..... two (2) months
with deep-plowing of soil
(12–15 inches); or nine (9) months
when soil is **only disced** (4–6 inches)

Cover Crops: Small grains and/or legumes intercropped within the cotton crop to which GINSTAR EC will be applied may **only** be used as cover crops and may not be harvested for food or feed. Small grains and/or legumes planted earlier than two (2) months following GINSTAR EC application may **only** be used as cover crops and may not be harvested for food or feed.

Do not plant any other rotational crops (*except* those specified above) within one year of application of GINSTAR EC.

Do not use immature crops for food or feed.

Do not allow spray drift to contact trees or crops other than the target crop of mature cotton, or cotton you desire to defoliate, as this product may injure or defoliate other crops.

Particular care should be taken when applying GINSTAR EC adjacent to lettuce, citrus, or cantaloupe.

Practices To Lower the Potential for Drift Onto Non-Target Crops

During applications, particularly under windy conditions, GINSTAR EC may drift to non-target crops.

To help reduce the drift potential, use the following practices:

- Do not apply GINSTAR EC by ground or air when wind speeds exceed ten (10) miles per hour at the time of application. Follow local recommendations if wind speeds of less than ten (10) miles per hour are specified in those recommendations.
- Use of low nozzle pressure (20–30 psi) is recommended.
- Do not apply GINSTAR EC when a temperature inversion is present or when conditions favor an inversion prior to completing application(s).
- Additionally, do not apply GINSTAR EC by air within one-half (½) mile of lettuce. Do not apply GINSTAR EC by ground equipment within 100 feet of lettuce.

Practices To Lower Drift Potential Onto Non-Target Crops In the Rio Grande Valley of Texas
To help reduce the drift potential, use the following practices:

- Do not apply GINSTAR EC by ground or air when wind speeds exceed ten (10) miles per hour at the time of application. Follow local recommendations if wind speeds of less than ten (10) miles per hour are specified in those recommendations.
- Use of low nozzle pressure (20–30 psi) is recommended.
- Do not apply GINSTAR EC when a temperature inversion is present or when conditions favor an inversion prior to completing application(s).
- Use the largest nozzle orifice possible which permits proper deposition and coverage of product.
- In addition, for citrus crops, do not apply GINSTAR EC by air when citrus in flush is within five (5) miles downwind of the point of application. Do not apply GINSTAR EC by ground when citrus in flush is within one-half (½) mile downwind of the point of application.

TIME OF APPLICATION: Apply GINSTAR EC cotton defoliant only to mature cotton plants when the last boll you expect to harvest is mature. A boll can be described as "mature" when it is too hard to be dented when squeezed between thumb and fingers, is difficult to slice with a sharp knife, and/or when seeds cut in cross sections have fully developed cotyledons, as evidenced by an absence of jelly within the seed.

Apply GINSTAR EC at least 5 days prior to anticipated harvest.

APPLICATION: GINSTAR EC may be applied by air or ground equipment. Apply specified dosages in 10–25 gallons of spray per acre with ground equipment or 2–10 gallons per acre by aircraft.

DOSAGE: Apply GINSTAR EC at a rate of 0.4 to 1.0 pint of formulated product per acre prior to harvest (see dosage chart below). At some locations, following the initial GINSTAR EC application, it may be necessary to apply a standard defoliant or a second, low rate of GINSTAR EC.

CAUTION: The addition of adjuvants can cause desiccation and/or leaf freezing during periods of high temperature. The use of compounds that desiccate leaf tissue is not recommended.

To Achieve an Application Rate of:	Use This Amount of GINSTAR EC	At the Indicated Rate, One Gallon of GINSTAR EC Will Treat:
0.075 lbs. ai/Acre	0.4 pts./A (6.4 oz./A)	20 Acres
0.10 lbs. ai/Acre	0.55 pts./A (8.8 oz./A)	15 Acres
0.15 lbs. ai/Acre	0.8 pts./A (12.8 oz./A)	10 Acres
0.1875 lbs. ai/Acre	1.0 pts./A (16.0 oz./A)	8 Acres

DO NOT APPLY MORE THAN 1.0 PINT OF GINSTAR EC PER ACRE PER SEASON.

CLEANOUT INSTRUCTIONS

Do not allow the spray solution to dry in the application equipment. Immediately following application, clean all equipment (mix tanks, pumps, transfer lines, application tanks, sumps, booms, nozzles, and all related equipment) thoroughly with cleaner and water. Refer to AgrEvo technical information bulletins for tank cleaners which may be helpful in removing fresh residues.

Should small quantities of GINSTAR EC remain in inadequately cleaned equipment, they may be released during subsequent applications and may cause damage to crops. AgrEvo USA Company accepts no liability for damage to crops due to inadequately cleaned equipment.

IMPORTANT: READ BEFORE USE

By using this product, user or buyer accepts the following conditions, warranty, disclaimer of warranties and limitations of liability.

CONDITIONS: The directions for use of this product are believed to be adequate and should be followed carefully. However, because of extreme weather and soil conditions, manner of use and other factors beyond AgrEvo USA Company's control, it is impossible for AgrEvo USA Company to eliminate all risks associated with the use of this product. As a result, crop injury or ineffectiveness is always possible. All such risks shall be assumed by the user or buyer.

DISCLAIMER OF WARRANTIES: THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE STATEMENTS MADE ON THIS LABEL. No agent of AgrEvo USA Company is authorized to make any warranties beyond those contained herein or to modify the warranties contained herein. AgrEvo USA Company disclaims any liability whatsoever for incidental or consequential damages, including, but not limited to, liability arising out of breach of contract, express or implied warranty (including warranties of merchantability and fitness for a particular purpose), tort, negligence, strict liability or otherwise.

LIMITATIONS OF LIABILITY: THE EXCLUSIVE REMEDY OF THE USER OR BUYER FOR ANY AND ALL LOSSES, INJURIES OR DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID, OR AT AGREVO USA COMPANY'S ELECTION, THE REPLACEMENT OF PRODUCT.

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Worker Protection Standard
WPS
Product labeling includes wording required by Worker Protection Standard

AgrEvo USA Company
Agribusiness
Little Falls Centre One
2711 Centerville Road
Wilmington, DE 19808

GS-SL-(C2931)-(D950130)-Reg. 1/95

AgrEvo™

Specimen Label

A company of Hoechst and NOR-AM

ACCEPTED
with COMMENTS
In EPA Letter Dated
MAY 17 1995

Under the Federal Insecticide, Fungicide, and Rodenticide Act as amended, for the pesticide registered under EPA Reg. No. 45639-173

Hoelon®

3EC HERBICIDE

EPA Registration Number 45639-173

RESTRICTED USE PESTICIDE
DUE TO ONCOGENICITY IN LABORATORY MICE*
For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

Hoelon®

3EC HERBICIDE

For Control of Wild Oats and Other Annual Grasses in Wheat (Including Durum Wheat) and Barley

ACTIVE INGREDIENT:**	
diclofop-methyl: methyl 2-[4-(2,4-dichlorophenoxy) phenoxy]propanoate	35.49%
INERT INGREDIENTS:	64.51%
TOTAL	100.00%

**Equivalent to 3.0 pounds of active ingredient per gallon.

EPA Reg. No. 45639-173

Protected by U.S. Patent No. 4,301,295

KEEP OUT OF REACH OF CHILDREN
DANGER — PELIGRO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.
(If you do not understand the label, find someone to explain it to you in detail.)

STATEMENT OF PRACTICAL TREATMENT

IN CASE OF SKIN OR EYE CONTACT: Immediately flush with plenty of water for at least 15 minutes.

IF SWALLOWED: Do not induce vomiting. HOELON® 3EC Herbicide contains petroleum distillates. Call a physician. Vomiting should be supervised by a physician because of the possible pulmonary damage via aspiration of the solvent.

NOTE TO PHYSICIAN: Aspiration hazard may contraindicate the use of gastric lavage.

IN CASE OF MEDICAL EMERGENCIES OR HEALTH AND SAFETY INQUIRIES, *OR* IN CASE OF FIRE, LEAKING, OR DAMAGED CONTAINERS, INFORMATION MAY BE OBTAINED BY CALLING 800-228-5635, EXT. 202.

PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
DANGER

Corrosive. Causes irreversible eye damage. Do not get in eyes or on skin or clothing. Avoid contact or inhalation of spray mist. Do not take internally.

PERSONAL PROTECTIVE EQUIPMENT

Some materials that are chemical-resistant to this product are listed below. If you want more options, follow the instructions for category F on an EPA chemical resistance category selection chart.

Applicators and Other Handlers Must Wear:

Coveralls over long-sleeved shirt and long pants; chemical-resistant gloves, such as barrier laminate or butyl rubber ≥14 mils, nitrile rubber ≥14 mils or viton ≥14 mils; chemical-resistant footwear plus socks; protective eyewear; chemical-resistant headgear for overhead exposure; chemical-resistant apron when cleaning equipment, mixing or loading; for exposures in enclosed areas, a respirator with either an organic vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G), for exposures outdoors, dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C).

Discard clothing and other absorbent materials that have been drenched or heavily contaminated with this product's concentrate. Do not reuse them. Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

ENGINEERING CONTROL STATEMENT

When handlers use closed systems, enclosed cabs, or aircraft in a manner that meets the requirements listed in the Worker Protection Standard (WPS) for agricultural pesticides [40 CFR 170.240 (d) (4–6)], the handler PPE requirements may be reduced or modified as specified in the WPS.

USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
- Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

ENVIRONMENTAL HAZARDS

This pesticide is toxic to fish. Use with care when applying in areas adjacent to any body of water. Keep out of lakes, streams, ponds, drainage basins, tidal marshes and estuaries. Do not apply directly to water, or to areas where surface water is present, or to intertidal areas below the mean high water mark. Do not apply when weather conditions favor runoff or drift. Avoid direct application or drift of spray material to water surfaces. Do not apply within 100 feet of an aquatic habitat. Do not contaminate arable land and/or water when disposing of equipment washwaters.

*The Environmental Protection Agency has concluded that diclofop-methyl the active ingredient in this product, produced tumors in laboratory mice. This effect was not observed in other species tested. The user must read and follow all precautionary statements on this label. Give particular attention to protective clothing requirements.

STORAGE AND DISPOSAL

Do not contaminate water, food, or feed by storage or disposal.

Do not use or store near heat or open flame. Do not store below 20°F.

PESTICIDE DISPOSAL: Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the hazardous waste representative at the nearest EPA regional office for guidance.

CONTAINER DISPOSAL: Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other procedures approved by state and local authorities.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. This labeling must be in the possession of the user at the time of the application. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted entry intervals. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 24 hours.

Exception: if the product is soil-injected or soil-incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated area if there will be no contact with anything that has been treated.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is: coveralls over long-sleeved shirt and long pants; chemical-resistant gloves, such as barrier laminate, butyl rubber ≥14 mils, nitrile rubber ≥14 mils or viton ≥ 14 mils; chemical-resistant footwear plus socks; protective eyewear.

GENERAL INFORMATION

HOELON 3EC Herbicide is a highly effective herbicide for the control of a broad spectrum of annual grassy weeds in wheat (including durum wheat) and barley. HOELON 3EC Herbicide is a 3-pound-active-ingredient-per-gallon emulsifiable concentrate. Depending on the crop and the grass species being controlled, HOELON 3EC Herbicide may be applied preplant-incorporated (to wheat only), preemergence, or postemergence. Read and carefully follow all label directions specified in this labeling.

APPLICATION EQUIPMENT NOTES

Ground

Whether applying HOELON 3EC Herbicide preplant-incorporated, preemergence, or postemergence, thorough uniform coverage of the soil or target weeds is critical to achieving satisfactory results. The use of flat fan nozzles, spaced 10 or 20 inches apart across the boom is recommended for optimum coverage with ground equipment. Ground applications should be in at least 10 gallons of water carrier per acre, using a minimum of 40 psi. Ground speed for application should not exceed 10 mph.

Aerial

Aerial applications must be applied in at least 5 gallons of water carrier per acre. Use spray nozzle tips and sufficient pressure to provide a uniform pattern and a median droplet size of 200–350 microns. DO NOT wide swath the application; HOELON 3EC Herbicide is a contact material when used postemergence and highly immobile in the soil when applied preplant incorporated or preemergence. DO NOT make aerial applications when wind is above 8 mph or within 100 feet of a lake, stream, drainage basin, tidal marsh or estuary.

Only clean water, free of suspended matter or other contaminants, should be used when applying HOELON 3EC Herbicide.

USE PRECAUTIONS

1. HOELON 3EC Herbicide does not control broadleaf weeds or perennial grassy weeds.
2. DO NOT allow livestock to graze treated fields. DO NOT harvest forage, hay or straw from treated fields prior to grain harvest.
3. DO NOT apply more than 1 application of HOELON 3EC Herbicide per growing season to wheat or barley.
4. HOELON 3EC Herbicide can be tank-mixed with the broadleaf herbicides listed on this label for broad spectrum weed control.
5. Applications of MCPA (ester) herbicide may be applied at a rate of 1.5 ounces per acre as a tank-mix with HOELON 3EC Herbicide and Buctril® Herbicide. DO NOT apply any other phenoxy, phenoxy-type, or Banvel® Herbicide within 5 days of a HOELON 3EC Herbicide application, or reduced grassy weed control will occur.
6. DO NOT apply HOELON 3EC Herbicide through any type of irrigation system.
7. When controlling mixed infestations of grassy weeds, always use the rate that will control the least susceptible species.
8. In-furrow application of organophosphate type insecticides prior to HOELON 3EC Herbicide application may result in crop injury.

INFORMATION ON HERBICIDE RESISTANT WEEDS

Repeated use of the same herbicide or related herbicides may result in rare, naturally resistant weeds multiplying to economic infestations. In areas with consistent use of the same herbicide or herbicide mode of action crop rotation and application of alternative mode of action herbicides

are encouraged to prevent and/or reduce ..ed resistance. For further information, contact an AgrEvo USA Company representative or your local state extension service

DIRECTIONS FOR THE PREPLANT INCORPORATED USE OF HOELON 3EC HERBICIDE ON WINTER WHEAT

This product is registered for the preplant incorporated use to control downy brome, ripgut brome, Japanese brome, windgrass and bulbous bluegrass in the states of:

Colorado	Montana	South Dakota
Idaho	Nebraska	Utah
Kansas	Oregon	Washington

(The General Information section must also be read for complete use instructions).

APPLICATION RATE INFORMATION

The use rate of HOELON 3EC Herbicide to control downy brome (*Bromus tectorum*), ripgut brome (*Bromus rigidus*), Japanese brome (*Bromus japonicus*), windgrass (*Apera interrupta*), and bulbous bluegrass (*Poa bulbosa*) will vary, depending on soil texture, soil organic matter content, soil moisture, and density of grass populations.

HOELON 3EC HERBICIDE APPLICATION RATES

	Broadcast Rate in Pints/A	
% Organic Matter ½–2%	% Organic Matter 2–3%	% Organic Matter >3%
2–2⅔	2⅔	*

*On soils with greater than 3% organic matter, the 2⅔ pints rate may provide only suppression of the grassy weeds listed on the preplant incorporated section of this label.

Use the highest recommended rate, according to the chart above, when heavy populations of annual grass (more than 25 plants per square foot) are anticipated (based on field history) and/or if soils are dry at the time of application.

INCORPORATION DIRECTIONS

HOELON 3EC Herbicide is highly immobile on the soil and must be mechanically incorporated into the annual grass germination zone to help insure satisfactory control. Incorporate HOELON 3EC Herbicide into the soil to a maximum depth of 2 inches (do not set incorporation equipment to cut more than 4 inches deep). Incorporate one time within 48 hours after application, followed by a second incorporation, in a different direction from the first, prior to seeding.

INCORPORATION EQUIPMENT

If the seedbed is free of trash and clods at the time of application, the use of a spiketooth, springtooth or flextine harrow, operated at 3–6 mph, is recommended. If the seedbed is trashy at the time of application, use an implement that is capable of incorporating the trash in the top 2 inches of the soil. A skew treader operated at 4–6 mph is recommended. Chisel plows may be used for first pass incorporation only. Operate at a 3–4 inch depth at 4–6 mph. A chisel plow is defined as having 3 rows of up to 18 inch sweeps on no greater than 12 inch centers. Sweeps should be staggered so that no soil is left unturned. Field cultivators should be set to cut 3–4 inches deep and operated at a speed of at least 5 mph. A ..eld cultivator used to incorporate HOELON 3EC Herbicide should have 3–4 rows of sweeps with "C" or "S" shaped shanks, spaced 7 inches or less and staggered so that no soil is left unturned. Conventional, deep furrow, or semi-deep furrow drills may be used for seeding.

PREPLANT INCORPORATED SPECIAL NOTES

1. DO NOT apply HOELON 3EC Herbicide preplant incorporated to barley, as barley damage will occur.
2. HOELON 3EC Herbicide may be tank-mixed with liquid fertilizers. Follow label recommendations concerning rates and incorporation. Before mixing HOELON 3EC Herbicide with fertilizer, perform a compatibility test in a quart jar. If the materials do not readily mix, do not tank-mix HOELON 3EC Herbicide with the fertilizer.

DIRECTIONS FOR THE PREEMERGENCE USE OF HOELON 3EC HERBICIDE ON WINTER WHEAT

This product is registered for preemergence use on winter wheat to control annual ryegrass in the states of:

Alabama	Maryland	Tennessee
Arkansas	Mississippi	Texas
Delaware	Missouri	Virginia
Georgia	North Carolina	Washington
Indiana	Oklahoma	West Virginia
Kentucky	Oregon	
Louisiana	South Carolina	

(The General Information section must also be read for complete use instructions.)

HOELON 3EC HERBICIDE APPLICATION RATES

	Broadcast Rate in Pints/A	
Soil Texture	% Organic Matter ½–2%	% Organic Matter >2%
Coarse (sandy loam, loamy sand)	2	2⅔
Fine (loam, silt loam, silt)	2⅔	2⅔

Use the 2⅔ pints/acre rate of HOELON 3EC Herbicide in fields that have a history of heavy annual ryegrass pressure. If rainfall does not occur within 7 days after application, reduced control may occur.

PREEMERGENCE SPECIAL INSTRUCTIONS

1. DO NOT apply HOELON 3EC Herbicide preemergence to barley as barley damage will occur.
2. HOELON 3EC Herbicide may be mixed with liquid fertilizers when making preemergence applications. Follow label recommendations concerning HOELON 3EC Herbicide rates. Before tank-mixing HOELON 3EC Herbicide with fertilizer, perform a compatibility test in a quart jar. If the materials do not readily mix, do not tank-mix HOELON 3EC Herbicide with the fertilizer.
3. HOELON 3EC Herbicide applied preemergence surface will not provide adequate brome control or control wild oats.

DIRECTIONS FOR THE POST...MERGENCE USE OF HOELON 3EC HERBICIDE ON WINTER WHEAT, SPRING WHEAT (INCLUDING DURUM WHEAT)

his product is registered for postemergence use on wheat (including durum wheat) in the following states:

labama	Idaho	Minnesota	Nevada	Oregon	Utah
rizona	Indiana	Mississippi	New Mexico	South Carolina	Virginia
rkansas	Kansas	Missouri	North Carolina	South Dakota	Washington
olorado	Kentucky	Montana	North Dakota	Tennessee	West Virginia
elaware	Louisiana	Nebraska	Oklahoma	Texas	
eorgia	Maryland				

he General Information section must also be read for complete use instructions.)

pply HOELON 3EC Herbicide as a broadcast postemergence spray at the rates listed below:

	Amount of HOELON 3EC Herbicide Per Acre (Pints)[1] Relative to Growth Stage of Annual Grassy Weeds		
usceptible Annual Grassy Weeds	**1–3 Leaf**	**3–4 Leaf**	**5 Leaf–2 Tillers**
nnual ryegrass (Italian)[2] ..... *Lolium multiflorum*	1⅓	1⅓–2	2–2⅔
oadleaf signalgrass (suppression) ... *Brachiaria platyphylla*	2⅔		
rabgrass[3] ..... *Digitaria sanguinalis*	2⅔		
ersian darnel ..... *Lolium persicum*	2⅔		
ill panicum ..... *Panicum dichotomiflorum*	2 to 2⅔	2⅔	
arnyardgrass watergrass ..... *Echinochloa crus-galli*			
iant foxtail ..... *Setaria faberii*			
reen foxtail pigeongrass ..... *Setaria viridis*			
ellow foxtail pigeongrass[3] ..... *Setaria lutescens*			
ild oat ..... *Avena fatua*			
hgrass Raoulgrass ..... *Rottboellia exaltata*			
olunteer corn ..... *Zea mays*			
itchgrass (suppression) ..... *Panicum capillare*			
nallseed canarygrass (suppression)[4] ..... *Phalaris minor*			
ring milletgrass ..... *Millium vernale*			
ooded canarygrass[4] ..... *Phalaris paradoxa*			

[1] When controlling mixed populations of grassy weeds, always use the rate that will control the least susceptible species.
[2] Annual ryegrass may also be controlled preemergence in winter wheat. See appropriate recommendation section in this labeling.
[3] For best control of crabgrass and yellow foxtail, application should be made before the second leaf fully emerges.
[4] See specific control recommendations for smallseed and hooded canarygrass in that section of the labeling.

OSTEMERGENCE SPECIAL INSTRUCTIONS

hen using HOELON 3EC Herbicide postemergence in heat to control annual grassy weed(s), and the weeds do t include annual ryegrass, broadleaf signalgrass, crabass, Persian darnel or yellow foxtail, apply the 2 pints per re rate when the annual grassy weeds are in the 1–3 leaf ige of growth, and growing conditions are optimal. In the rth central region of the United States (east of the Rocky ountains) in spring wheat and durum under normal growg conditions, the 1–3 leaf stage of wild oat plants generaloccurs 16–26 days after planting. In the northwest region the United States in spring wheat and durum (west of the cky Mountains) under normal growing conditions the 1–eaf stage of wild oat plants generally occurs 18–28 days er planting. In either region, under normal growing conions, wild oat plants will add an additional leaf every 4 ys. In either region, begin checking your fields 10–12 days er planting to assure correct application timing. Higher plication water volumes and use rates of HOELON 3EC rbicide should be used when the majority of annual ssy weeds are not clearly in the specified stage of growth, growth is retarded due to adverse growing conditions, or der heavy weed infestations. Apply HOELON 3EC Hercide before the first node (jointing) develops in the heat plant. Do not apply HOELON 3EC Herbicide less n 77 days before harvesting wheat.

CROP OIL CONCENTRATE

In spring wheat (including durum wheat) and winter wheat, it may be helpful to add 1 pint to 1 quart per acre of crop oil concentrate approved for use on growing crops. Use a crop oil concentrate containing a blend of 80 percent (minimum) petroleum or vegetable base oil and the remaining composed of a tolerance-exempt surfactant. Do not use crop oil concentrate with HOELON 3EC Herbicide in winter wheat when conditions are cool and wet. Some slight wheat yellowing may be noted when crop oil concentrates are added to HOELON 3EC Herbicide.

FUNGICIDE TANK-MIXES FOR POSTEMERGENCE APPLICATIONS IN WHEAT

HOELON 3EC Herbicide can be tank-mixed with mancozeb, Tilt®, Topsin®, Mertect® DF or Benlate® fungicides when application timing is correct for both products. All fungicides should be used in accordance with the label limitations and precautions for each product. No label dosage rates should be exceeded.

BROADLEAF TANK-MIXES FOR POSTEMERGENCE APPLICATIONS IN WHEAT

All broadleaf herbicides should be used in accordance with the label limitations and precautions for each product. No label dosage rates should be exceeded. For best results, tank-mixes should be used when growing conditions (air

temperature and soil moisture) are optimum and grasses are in the 1–3 leaf stage of growth with light to moderate infestations.

HOELON 3EC HERBICIDE + BUCTRIL® HERBICIDE

HOELON 3EC Herbicide may be tank-mixed with Buctril Herbicide for broadleaf weed control in spring wheat (including durum wheat) and winter wheat. HOELON 3EC Herbicide should be used at a rate of 2 to 2⅔ pints per acre (depending on size of annual grasses) as specified on this label. Buctril Herbicide should be mixed at a rate of 1 to 1½ pints per acre, according to the directions specified on the respective label.

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE + MCPA (ESTER) 4EC

Low rates of MCPA (ester) 4EC may be added to a tank-mix of HOELON 3EC Herbicide + Buctril Herbicide. HOELON 3EC Herbicide should be used at a rate of 2⅔ pints per acre. When using Buctril Herbicide, 1 pint per acre should be tank-mixed with MCPA (ester) 4EC at 1½ ounces per acre. MCPA (ester) 4EC rates in excess of 1½ ounces per acre may reduce the grassy weed control provided by HOELON 3EC Herbicide. No other formulations of MCPA should be substituted for the 4 pound active ingredient ester formulation.

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE + GLEAN® HERBICIDE —WINTER WHEAT ONLY

A three-way tank-mix of HOELON 3EC Herbicide + Buctril Herbicide + Glean Herbicide can be applied for annual ryegrass (in the Pacific Northwest only), wild oat and broadleaf weed control in winter wheat. The use rate of HOELON 3EC Herbicide should be 2⅔ pints per acre with a maximum of ¼ ounce Glean Herbicide. Buctril Herbicide should be used at 1 to 1½ pints per acre. This tank-mixture should only be used when soil moisture is good and wild oats are in the 1–4 leaf stage. Reduced control of foxtail is likely when tank-mixing with Glean Herbicide. When foxtail is the major grassy weed in the field, DO NOT tank-mix HOELON 3EC Herbicide + Glean Herbicide. Use sequential treatments. Refer to the Glean Herbicide label for crop rotation restrictions.

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE + HARMONY® EXTRA HERBICIDE—WINTER WHEAT ONLY

A three-way tank-mix of HOELON 3EC Herbicide + Buctril Herbicide + Harmony Extra Herbicide can be applied for annual ryegrass (in the Pacific Northwest only), wild oat and broadleaf weed control in winter wheat. The HOELON 3EC Herbicide rate should be 2⅔ pints per acre with a maximum of 0.4 ounce per acre Harmony Extra Herbicide. Buctril Herbicide should be used at 1 to 1½ pints per acre. This tank-mixture should only be used under good soil moisture conditions when wild oats are in the 1–4 leaf stage. Reduced control of foxtail is likely when tank-mixing with Harmony Extra Herbicide. When foxtail is the major grassy weed in the field, DO NOT tank-mix HOELON 3EC Herbicide + Harmony Extra Herbicide. Use sequential treatments. Refer to the Harmony Extra Herbicide label for crop rotation restrictions.

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE + AMBER® HERBICIDE—WINTER WHEAT ONLY

A three-way tank-mix of HOELON 3EC Herbicide + Buctril Herbicide + Amber Herbicide can be applied for annual ryegrass (in the Pacific Northwest only), wild oat and broadleaf weed control in winter wheat. The Amber Herbicide rate should not exceed 0.28 ounce per acre when used in this tank-mix. The HOELON 3EC Herbicide rate must be 2⅔ pints per acre. Buctril Herbicide should be used at 1 to 1½ pints per acre. To utilize this tank-mix, good soil moisture and wild oat in the 1–4 leaf stage are required. Reduced control of foxtail is likely when tank-mixing with Amber Herbicide. When foxtail is the major grassy weed in the field, DO NOT tank-mix HOELON 3EC Herbicide + Amber Herbicide. Use sequential treatments. Refer to the Amber Herbicide label for crop rotation restrictions.

Special Note: DO NOT tank-mix HOELON 3EC Herbicide with any broadleaf herbicides in the states of Alabama, Delaware, Georgia, Maryland, North Carolina, South Carolina, and Virginia as reduced annual ryegrass control may occur.

FERTILIZER TANK-MIXES POSTEMERGENCE IN WHEAT

HOELON 3EC Herbicide applied postemergence in wheat may only be tank-mixed with liquid nitrogen fertilizer (28–32%) if the timing for use is compatible. **The concentration of liquid nitrogen fertilizer to water should not exceed 50% of the total carrier in the spray tank.** When mixing with liquid nitrogen fertilizer as a partial carrier, crop burn may occur. This condition is intensified under higher temperatures (greater than 75°F daytime) and/or low soil moisture. This mixture should not be used when these environmental conditions are present.

DO NOT use less than 2 pints per acre HOELON 3EC Herbicide when tank-mixing with liquid nitrogen.

DO NOT tank-mix HOELON 3EC Herbicide and liquid fertilizer in the states of Alabama, Arkansas, Delaware, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia. Reduced annual grass control may occur from this tank-mix.

In all of the above-labeled tank-mix options, ground applications should be made with a minimum of 10 gallons of carrier per acre, and air applications with a minimum of 5 gallons of carrier per acre. If other broadleaf herbicides are applied within 5 days, reduced grassy weed control may occur.

DIRECTIONS FOR THE POSTEMERGENCE CONTROL OF SMALLSEED CANARYGRASS AND WILD OAT IN WHEAT IN ARIZONA ONLY

Apply HOELON 3EC Herbicide as a broadcast postemergence spray at the rates listed below.

Amount of HOELON 3EC Herbicide Per Acre (Pints) Relative to Growth Stage of Annual Grassy Weeds

Susceptible Annual Grassy Weeds	Stage of Growth	Pints/Acre Rate
Wild oat[1]	1–3 leaves	2–2⅔
	4 leaves	2⅔
Smallseed canarygrass (suppression)[1]	1–2 leaves	2⅔

[1]Under dry conditions add 1 pint to 1 quart per acre of crop oil concentrate.

DIRECTIONS FOR THE POSTEMERGENCE CONTROL OF ANNUAL RYEGRASS, WILD OAT, SMALLSEED CANARYGRASS AND HOODED CANARYGRASS IN WHEAT IN CALIFORNIA ONLY

HOELON 3EC HERBICIDE APPLICATION RATES

	Broadcast Rate in Pints per Acre			
rasses	1–3 Leaf[1]	4 Leaf	4–5 Leaf	5 Leaf – 2 Tiller
nual ryegrass	1⅓	1⅓	2	2⅔
ild oat	2–2⅔	2⅔	DO NOT APPLY	
ooded canarygrass	2–2⅔	DO NOT APPLY	DO NOT APPLY	

EATHER CONSIDERATIONS

fall-seeded winter or spring wheat varieties, if one or a mbination of the following environmental conditions are esent or prolonged preceding a HOELON 3EC Herbicide plication, crop injury may occur.

COLD TEMPERATURES

If at **anytime** during the 72 hours (3 days) preceding a HOELON 3EC Herbicide application the temperature drops below 35°F

2. MOISTURE CONDITIONS
   a) Water-logged or poorly drained fields
   b) Moisture content is at field capacity

If the above adverse environmental conditions are present, the wheat is already under severe environmental stress; do not compound the stress with chemical applications. With respect to the foregoing statement: buyer specifically assumes all risks should cold and/or wet weather conditions occur prior to or during the HOELON 3EC Herbicide application.

If freezing temperatures are predicted within three days after application, HOELON 3EC Herbicide use should be delayed.

Notes

1. In California, HOELON 3EC Herbicide may only be tank-mixed with Buctril Herbicide. Follow the label limitations and precautions on each label. No label dosage rates should be exceeded.
2. In California, HOELON 3EC Herbicide should be applied postemergence only to wheat.
3. DO NOT apply HOELON 3EC Herbicide in Monterey, Santa Clara, Kern, Los Angeles, San Louis Obispo, and Riverside counties.

DIRECTIONS FOR THE POSTEMERGENCE USE OF HOELON 3EC HERBICIDE ON BARLEY

is product is registered for postemergence use on all spring barley varieties in the following states:

izona	Maryland	New Mexico	South Carolina	Washington
olorado	Minnesota	North Carolina	South Dakota	West Virginia
elaware	Montana	North Dakota	Texas	Wyoming
aho	Nebraska	Oklahoma	Utah	
nsas	Nevada	Oregon	Virginia	

he General Information section must also be read for complete use instructions.)

pply HOELON 3EC Herbicide as a broadcast postemergence spray at the rates listed below:

sceptible Annual Grassy Weeds		Amount of HOELON 3EC Herbicide Per Acre (Pints)[1] Relative to Growth Stage of Annual Grassy Weeds			
		1–3 Leaf	4 Leaf	5 Leaf	5 Leaf–2 Tillers
nual ryegrass Italian[2]	*Lolium multiflorum*	1⅓	1⅓	2	2⅔
oadleaf signalgrass suppression	*Brachiaria platyphylla*	2⅔			
abgrass[3]	*Digitaria sanguinalis*	2⅔			
rsian darnel	*Lolium persicum*	2⅔			
allseed canarygrass	*Phalaris minor*	2⅔			
ll panicum	*Panicum dichotomiflorum*	2 to 2⅔	2⅔		
rnyardgrass watergrass	*Echinochloa crus-galli*				
ant foxtail	*Setaria faberii*				
een foxtail pigeongrass	*Setaria viridis*				
llow foxtail pigeongrass[3]	*Setaria lutescens*				
ld oat	*Avena fatua*				
grass Raoulgrass	*Rottboellia exaltata*				
lunteer corn	*Zea mays*				
tchgrass suppression	*Panicum capillare*				

hen controlling mixed populations of grassy weeds, always use the rate that will control the least susceptible species.
nual ryegrass may also be controlled preemergence in winter wheat. See appropriate recommendation section in this labeling.
r best control of crabgrass, smallseed canarygrass and yellow foxtail, application should be made before the second leaf fully emerges.

HOELON 3EC HERBICIDE RECOMMENDATIONS FOR SPRING BARLEY IN THE NORTH CENTRAL, SOUTHWEST AND WESTERN REGIONS OF THE UNITED STATES EXCEPT CALIFORNIA

When using HOELON 3EC Herbicide to control annual grassy weeds and the weeds do not include annual ryegrass, broadleaf signalgrass, crabgrass, smallseed canarygrass or Persian darnel, apply the 2 pints per acre rate when the annual grassy weeds are in the 1–4 leaf stage of growth and growing conditions are optimal. The higher rate of 2⅓ pints per acre and higher application water volumes should be used (see chart) when the majority of grassy weeds is not clearly in the specified stage of growth, if grassy weed infestations are high or if growth is retarded due to a lack of moisture. Thorough spray coverage is essential.

WEATHER CONSIDERATIONS

In spring-seeded barley, DO NOT apply if one or a combination of the following environmental conditions are present the day before or predicted within three days after a HOELON 3EC Herbicide application, as crop injury may occur.

1. COLD TEMPERATURES
   Cold or freezing temperatures (below 35°F)
2. MOISTURE CONDITIONS
   When soils are either water-logged or poorly drained

If the above adverse environmental conditions are present, barley is already under severe environmental stress; do not compound the stress with any chemical applications. With respect to the foregoing statement: buyer specifically assumes all risks should cold and/or wet weather conditions occur prior to or after the HOELON 3EC Herbicide application.

BROADLEAF TANK-MIXES FOR POSTEMERGENCE APPLICATIONS IN SPRING BARLEY

All broadleaf herbicides should be used in accordance with the label limitations and precautions for each product. No label dosage rates should be exceeded. For best results, tank-mixes should be used when growing conditions (air temperature and soil moisture) are optimum and grasses are in the 1–3 leaf stage of growth with light to moderate infestations (less than 25 wild oat plants per square foot).

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE

HOELON 3EC Herbicide may be tank-mixed with Buctril Herbicide for broadleaf weed control in spring barley. HOELON 3EC Herbicide should be used at a rate of 2 to 2⅓ pints per acre (depending on the size of the annual grasses, environmental conditions, and density of grass populations) as specified on this label. Buctril Herbicide should be mixed at a rate of 1 to 1½ pints per acre, according to the directions specified on the respective label.

HOELON 3EC HERBICIDE + BUCTRIL HERBICIDE + MCPA (ESTER) 4EC

Low rates of MCPA (ester) 4EC may be added to a tank-mix of HOELON 3EC Herbicide + Buctril Herbicide. HOELON 3EC Herbicide should be used at a rate of 2⅓ pints per acre. When using Buctril Herbicide, 1 pint per acre should be tank-mixed with MCPA (ester) 4EC at 1½ ounces per acre. MCPA (ester) 4EC rates in excess of 1½ ounces per acre may reduce the grassy weed control provided by HOELON 3EC Herbicide. No other formulations of MCPA should be substituted for the 4 pound active ingredient ester formulation.

SPECIAL NOTES FOR SPRING BARLEY

1. DO NOT tank-mix HOELON 3EC Herbicide with Glean Herbicide.
2. DO NOT tank-mix HOELON 3EC Herbicide with crop oil concentrate.
3. DO NOT tank-mix HOELON 3EC Herbicide with liquid fertilizers.
4. HOELON 3EC Herbicide is registered for use on all varieties of spring-seeded barley.
5. HOELON 3EC Herbicide should be applied to 1–4 leaf barley. Applications made to tillered barley during cold temperatures and/or wet soil conditions may result in crop damage.
6. DO NOT apply preemergence to barley.
7. DO NOT apply less than 66 days before harvesting.

HOELON 3EC HERBICIDE RECOMMENDATIONS FOR WINTER BARLEY IN THE MIDATLANTIC AND SOUTHEAST REGIONS OF THE UNITED STATES

When using HOELON 3EC Herbicide to control annual ryegrass in fall-seeded barley, use the 1½ pints per acre rate when the ryegrass is in the 1–4 leaf stage of growth. The low rate of 1½ pints per acre should only be used under optimum growing conditions. If the crop and annual ryegrass is under drought stress, increase the rate of HOELON 3EC Herbicide from 2–2⅓ pints per acre, depending on the severity of infestation and size of annual ryegrass. For mixed grass infestations, refer to the rate and timing chart for grasses controlled in barley.

BROADLEAF TANK-MIXES FOR POSTEMERGENCE APPLICATIONS IN WINTER BARLEY

See broadleaf tank-mixes approved for use on spring barley.

FERTILIZER TANK-MIXES POSTEMERGENCE IN WINTER BARLEY

DO NOT tank-mix HOELON 3EC Herbicide with liquid fertilizers in winter barley as reduced annual ryegrass control may occur.

SPECIAL NOTES FOR WINTER BARLEY

1. DO NOT tank-mix HOELON 3EC Herbicide with Glean Herbicide.
2. DO NOT tank-mix HOELON 3EC Herbicide with crop oil concentrate.
3. Use only on the following winter barley varieties: Milton, Boone, Molly Bloom, Wysor, Pennco, Nomini, Anson, Mulligan, Henry and Sussex.
4. Apply HOELON 3EC Herbicide after tiller initiation but prior to jointing of the winter barley.
5. DO NOT apply preemergence to winter barley.
6. DO NOT apply less than 66 days before harvesting.

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Banvel is a registered trademark of Sandoz Crop Protection Corporation.
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IMPORTANT: READ BEFORE USE

By using this product, user or buyer accepts the following conditions, warranty, disclaimer of warranties and limitations of liability.

CONDITIONS: The directions for use of this product are believed to be adequate and should be followed carefully. However, because of extreme weather and soil conditions, manner of use and other factors beyond AgrEvo USA Company's control, it is impossible for AgrEvo USA Company to eliminate all risks associated with the use of this product. As a result, crop injury or ineffectiveness is always possible. All such risks shall be assumed by the user or buyer.

DISCLAIMER OF WARRANTIES: THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, WHICH EXTEND BEYOND THE STATEMENTS MADE ON THIS LABEL. No agent of AgrEvo USA Company is authorized to make any warranties beyond those contained herein or to modify the warranties contained herein. AgrEvo USA Company disclaims any liability whatsoever for incidental or consequential damages, including, but not limited to, liability arising out of breach of contract, express or implied warranty (including warranties of merchantability and fitness for a particular purpose), tort, negligence, strict liability or otherwise.

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AgrEvo USA Company
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2711 Centerville Road
Wilmington, DE 19808

er Protection Standard
WPS
oduct labeling includes wording required by Worker Protection Standard

HE-SL-(C2937)-(Regulatory Code)-Reg. 4/95

H.R. 2795

To amend the Trade Act of 1974 and the Tariff Act of 1930 to clarify the definitions of domestic industry and like articles in certain investigations involving perishable agricultural products.

see also Terence P. Stewart under H.R. 2822
see also Pro Trade Group under H.R. 2822

ABBOTT

Chemical and Agricultural Products Division

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February 27, 1996

Bill Schwoerer
District Sales Representative
13061 Meadowbreeze Drive
West Palm Beach, FL 33414
(407) 795-5230

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: H.R. 2795,

I am a supplier of biological pest control materials to the Florida winter vegetable industry. I have worked in the Florida winter vegetable industry for just over 6 years and am greatly concerned about my livelihood and the future of the industry in which I earn my living.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

Allowing Mexico to dump their product into the U.S. is not fair to the Florida winter vegetable industry or the American people. During the past decade, Florida Agriculture has been asked by the American people, through legislation, to be stewards of the environment, to emphasize farmworker safety and to strictly adhere to U.S. E.P.A. label requirements. My industry has responded magnificently! We provide the American consumer with the safest, highest quality food in the world at a very fair cost and do not sacrafice farmworker safety in the process. If we allow Mexico to control our winter vegetable market, the American consumer will have little control or knowledge of how their food is produced. This is not fair to the Florida winter vegetable industry or the American consumer!

I support passage of H.R. 2795!

Sincerely,

William A. Schwoerer

AMERICAN FARM BUREAU FEDERATION®

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March 1, 1996

The Honorable Bill Archer
Chairman
House Ways and Means Committee
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Sections 201-204 of the Trade Act of 1974 authorize the President to help domestic industries adjust to import competition, pending review by the International Trade Commission. Section 202 broadly defines "domestic industry" as U.S. producers as a 'whole of the article,' or as all producers regardless of seasonality or regionality of production. Thus, under current law the ITC cannot consider seasonality in trade-sanction cases.

Last year, the Florida domestic winter tomato industry sought relief for injury resulting from a seasonal surge of post-NAFTA imports of Mexican tomatoes. The ITC reviewed the domestic industry as nationwide and year-round and denied relief to Florida producers.

Domestic winter vegetable growers are suffering from dramatic increases in imports of Mexican squash, eggplant, sweet corn, beans, bell peppers, tomatoes and other vegetables. These crops are seasonal and perishable. Florida's winter growing and harvesting season are congruent with Mexico's.

Since the enactment of NAFTA two years ago and the devaluation of the Mexican peso in December 1994, Mexico has been flooding the U.S. market with tomatoes, green beans, squash, bell peppers, and other vegetable crops. During this time Florida's share of the country's winter vegetable market has declined from about 68 percent to just over 37 percent.

Senator Graham of Florida introduced legislation, S.1463, which passed the Senate by voice vote. Companion legislation, H. R. 2795, introduced by Rep. Shaw, is before your committee. Both bills clarify the definition of domestic industry in Section 202 of the 1974 Trade Act for cases involving perishable agricultural products. In these cases the ITC would be authorized to define the industry to include domestic producers who produce the product during a particular growing season if two conditions are proven:

1. The domestic producers sell all or almost all of the production during that growing season.

2. During the growing season, other domestic producers of the article who produce in a different growing season do not supply, to any substantial degree, demand for the article.

In situations where the petitioner in a case meets the standard, the phrase "like or competitive article" is limited to such products produced during the applicable growing season. The scope of the proposal is limited to these situations where international producers compete directly with domestic producers of the same like product during the same growing season. The language is designed to preclude arbitrary season cut-offs from meeting the standard set forth in the definition.

The American Farm Bureau supports this legislation to allow reasonable recourse to producers injured by dramatic changes in imports and urges you to take immediate action on H.R. 2795.

Sincerely,

Dean R. Kleckner

Dean R. Kleckner
President

Serving The Industry Since 1906.
Jens Knutson
Director, Regulatory and Industry Affairs

March 1, 1996

The Honorable Philip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairman:

The American Meat Institute is the national trade association representing U.S. red meat and turkey packers and processors, whose business prosperity is increasingly tied to more open international trade flows. In recognition of that, AMI has been an ardent supporter of both NAFTA and GATT.

Our members and the livestock producers who supply them enjoyed clear and impressive trade benefits immediately upon NAFTA's implementation. With many of our members' pork and turkey items moving into Mexico subject to tariff rate quotas and other potentially restrictive conditions agreed to in the understanding that the parameters characterizing those agreements had specific meanings, AMI is particularly sensitive to the hazards inherent in any trading partner changing the meaning of the terms of trade already agreed to. Changing the 1974 Trade Act's definition of "domestic industry" to "seasonal industry" as H.R. 1463 would do presents just such a hazard.

The trade-disrupting precedent established by this legislation's attempt to "protect" a winter tomato business in Florida puts at serious risk a $300 million and growing Mexican market for U.S. red meats and turkey. Were Mexico to have proposed a similar precedent, AMI would have been among the first to oppose it.

While AMI's interests in this legislation are related to our industry's exports, we would remind you there is more at issue here than the trade between the U.S. and Mexico in red meats, turkey or tomatoes. AMI urges your committee to weigh carefully the broader implications of H.R. 1463 to American agriculture.

Sincerely,

Jens Knutson

cc: J. Patrick Boyle
Phillip Moseley

Post Office Box 3556, Washington, DC 20007 • 1700 North Moore Street, Arlington, VA 22209
Phone: 703/841-2400 Fax: 703/527-0938

ANDREW &
WILLIAMSON SALES CO., INC.
9940 MARCONI DR. SAN DIEGO, CA 92173
Bus: (619) 661-6004

February 29, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: H.R. 2795

Dear Mr. Moseley:

On behalf of the tomato industry, Andrew & Williamson Sales Co., Inc. is writing to express its concern about legislation that is currently pending before your committee that would redefine "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers. We believe that this measure is contrary to the spirit and, perhaps, the letter of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) accord.

Moreover, much like the U.S. Trade Representative's proposal to change the tariff rate quota for imports of Mexican tomatoes, this legislation would set a disturbing trade policy precedent and may ultimately harm U.S. exports.

Specifically, this legislation would encourage other U.S. trading partners to adopt similar measures to shield their commodities from U.S. competition. As the world's largest agricultural exporter, we clearly have the most to lose. Our trade policy should be based on the overall interest of all commodities not just one.

We urge your committee to examine this bill carefully before it takes action. If it does, we are confident that you will agree that the United States should not risk such a protectionist initiative.

Sincerely,

Fred L. Williamson
President

cc: Relevant Members of Congress

STATE OF ARIZONA
EXECUTIVE OFFICE

FIFE SYMINGTON
Governor

March 1, 1996

The Honorable Bill Archer
Chairman, Committee on Ways and Means
United States House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Dear Bill:

I am writing in strong opposition to the Shaw legislation (H.R. 2795) being considered by the Committee on Ways and Means. This legislation is a protectionist measure that would benefit only the Florida winter tomato industry, and invite retaliatory and protectionist measures by our trade partners.

The Shaw legislation is a disguised tax and would violate the intent and spirit of the North American Free Trade Agreement. When we entered this partnership, the goal was to eliminate tariffs and non-tariff trade barriers. Redefining Florida's seasonal, winter tomato industry as a domestic industry is a non-tariff trade barrier and a violation of the NAFTA. Imposing it likely will result in a retaliatory move by Mexico against one of our leading agricultural exports to that country. It would also inflict damage to the fragile economies of our border communities.

These communities rely on the trade and relations that have existed with our neighbors for many years, and are adversely affected by economic imbalances such as would occur under the Shaw legislation. The U.S. - Mexico agriculture industry is truly a borderless one. American companies supply fertilizer, seed, packaging supplies, pallets and a variety of farm equipment to Mexico's tomato industry. Thousands of American jobs, not to mention the North American distribution network, could be jeopardized by the effects of the Shaw legislation.

We made a long-term commitment with our neighbors to open the North American marketplace and to engage in free trade. As a Republican governor who is committed to cutting taxes and implementing economic development initiatives that benefit Arizona, I strongly support NAFTA and the principles of free trade, which generates billions of dollars for this state, and our country. Thus, it is my hope that the Committee on Ways and Means will understand the dangers of passing the Shaw legislation.

Thank you for your time and careful attention to this matter.

Sincerely,

Fife Symington
GOVERNOR

FS:ko

cc: Hon. Newt Gingrich, Speaker, U.S. House of Representatives
Arizona Congressional Delegation
Keith Kelly, Director, Arizona Department of Agriculture
Harlan Capin, Chairman, Border Issues Committee
Border Trade Alliance
Fresh Produce Association of the Americas

BARNETT FARMS, INC.

Our Motto

"The Most of the Best for the Least"

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

Russell R. Barnett

P.O. Box 340 • Immokalee, FL 33934
Telephone(s): (813) 657-6677 or (813) 657-6670 • FAX (813) 657-3926
Sales handled by Ovid or Randy Barnett

BARNETT-PARTIN PLANTS, INC.
P.O. Box 340
Immokalee, FL 33934

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

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Sincerely,

Russell R. Barnett

DANA L. BATHURST
1423 North Swinton Avenue
Delray Beach, Florida 33444

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office Building
Washington, D. C. 20515

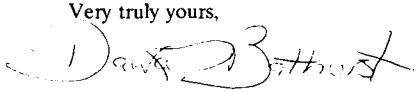
Re: **H. R. 2795**

Dear Mr. Moseley:

I am employed in agriculture. The surging and dumping of produce by Mexico is jeopardizing my job.

I SUPPORT H.R. 2795.

Very truly yours,



DANA L. BATHURST

(IDENTICAL LETTER ALSO RECEIVED FROM 37 OTHER INDIVIDUALS)

MERVYN E. BECK
5503 Wheatley Court
Lantana, Florida 33462

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office Building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

I am employed in agriculture. The surging and dumping of produce by Mexico is jeopardizing my job.

I SUPPORT H.R. 2795.

Very truly yours,

MERVYN E. BECK

BEDNER GROWERS, INC.
14186 STARKEY ROAD
DELRAY BEACH, FL 33446

(407) 400-9004

FEBRUARY 28, 1996

PHILIP MOSELEY, CHIEF OF STAFF
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515

RE: H.R. 2795

DEAR MR. MOSLEY,

WE ARE A FLORIDA VEGETABLE FARMER. WE ARE FAMILY OWNED AND OPERATED AND HAVE BEEN IN BUSINESS FOR 30 SOME YEARS. IN THE WINTER SEASON WE EMPLOY UP TO 250 PEOPLE.

THE DRAMATIC INCREASE IN WINTER VEGETABLES BEING SHIPPED INTO THIS COUNTRY OVER THE PAST TWO GROWING SEASONS HAS DESTROYED THE ABILITY WE HAVE TO CONTINUE FARMING.

THE MEXICANS DUMP PRODUCE BELOW THE COST OF PRODUCTION DUE TO THE PESO DEVALUATION. THIS DRIVES PRICES DOWN TO AS LITTLE AS 50% OF OUR PRODUCTION COST.

WITHOUT A SEASONAL DEFINITION OF OUR INDUSTRY, WHICH IS THR ONLY AMERICAN PRODUCTION AREA FOR VEGETABLES BETWEEN NOVEMBER AND MAY, WE CANNOT EVEN APPLY TO THE INTERNATIONAL TRADE COMMISSION FOR RELIEF.

WE SUPPORT H.R. 2795.

SINCERELY,

Marie Y Bedner

MARIE Y BEDNER
OPERATIONS MANAGER

Cathy W. Berks
7250 N.W. 84th Avenue
Parkland, Florida 33065

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Cathy W. Berks

Cathy W. Berks

BOB DEAN SUPPLY, INC.
283 Jefferson Avenue
Immokalee FL 33934

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trad Commission for relief. We support passage of H. R. 2795.

Sincerely,

Ralph Scott

February 28, 1996

Philip Moseley
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20516

RE: Bill # H. R. 2795

I am employed by a business that is supported by Florida winter vegetable growers.

The dumping, surges, and incredible volume of Mexican winter vegetables caused by the peso devaluation is destroying the Florida winter vegetable industry and my livelihood.

H. R. 2795 would allow farmers to apply to the International Trade Commission for relief. I strongly support passage of H. R. 2795.

Sincerely,

Farm Manager for Pepe Farms
Delray Beach, Palmetto Fla.
Earl Bone

TELEPHONE 813 - 992-1801
FAX 813 - 992-7194

Bonita Packing Co., Inc.
P. O. BOX 309
BONITA SPRINGS, FLORIDA 33959

Fresh Florida Tomatoes

February 28, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

Dear Mr. Moseley:

Our company has been in business for twenty-three years, and employs 1,400 people in the farming and packing operations.

Since NAFTA we have lost millions upon millions of dollars farming. This is due to the increase of winter tomatoes being shipped from Mexico. There has been dumping of produce which reduces our prices below production cost.

No matter how you look at it, the reality is we are being put out of business. All we want is a fair chance. Please help before it's too late. We need action now or we won't be here next year.

The proposed legislation H. R. 2795 will provide relief for our seasonal produce, and give us access to trade relief under § 201 law.

We firmly support the Florida Fruit and Vegetable Assn. and the Florida Tomato Exchange who have voiced the opinion of the farming industry of Florida by endorsing this legislation.

Sincerely,

Billy Don Grant

Billy Don Grant
President

Raymond Burggraf
1076 Staghorn
Wellington, Florida 33414

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Raymond Burggraf

By permission of The Chairman

CAIRNS GROUP

28 February, 1996

The Honorable
Philip M. Crane
United States House of Representatives
233 Cannon House Office Building
Washington D. C. 20515-1308

Dear Mr Crane,

As representatives of the Cairns Group of Agricultural Fair Trading Nations, we are writing to convey our concerns about legislation designed to amend safeguards provisions of the Trade Act of 1974 (HR.2795 and S.1463). We would like this letter included with other written comments on HR.2795 for the public record.

In particular, we are most concerned about the definitions of 'domestic industry and like or directly competitive articles' included in HR.2795 and S.1463, which would apply to safeguards actions involving perishable agricultural products. The amendments would have the effect of unilaterally lowering the threshold for finding serious injury or threat thereof to the domestic industry. We consider that the application of such provisions would be inconsistent with the relevant provisions of the World Trade Organisation (WTO) Agreement on Safeguards.

Moreover, we are troubled that this safeguards legislation may prompt other countries to adopt similar legislation which would limit market access for agricultural exporting countries, including the United States. Such a reaction would undermine efforts of the Cairns Group and United States to promote freer trade in agricultural products. We encourage the United States to take appropriate steps to ensure that its international trade obligations are strictly and faithfully adhered to.

The United States has played a leading role in advancing the cause of trade liberalisation based on transparent multilateral rules and disciplines. We urge your co-operation and understanding in continuing to foster a global trading environment which will promote and facilitate economic growth and prosperity.

Yours sincerely,

Argentina
Australia
Brazil
Canada
Chile
Colombia
Fiji
Hungary
Indonesia
Malaysia
New Zealand
Philippines
Thailand
Uruguay

Nora L. Jaureguiberry
Chargé d'Affairs a.i. of Argentina

John McCarthy
Ambassador of Australia

Paulo-Tarso Flecha de Lima
Ambassador of Brazil

Raymond Chrétien
Ambassador of Canada

John Biehl
Ambassador of Chile

Carlos Lleras de la Fuente
Ambassador of Colombia

Pita Kewa Nacuva
Ambassador of Fiji

Gyorgy Banlaki
Ambassador of the Republic of Hungary

Arifin Mohamad Siregar
Ambassador of the Republic of Indonesia

Rajmah Hussain
Chargé d'Affairs a.i. of Malaysia

John Wood
Ambassador of New Zealand

Raul Ch. Rabe
Ambassador of the Philippines

Akrasid Amatayakul
Minister/Deputy Chief of Mission of Thailand

Alvaro Moerzinger
Chargé d'Affairs of Uruguay

By permission of The Chairman

Canadian Embassy Ambassade du Canada

501 Pennsylvania Avenue, NW
Washington, DC 20001

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley,

Thank you for the opportunity to submit our comments on a number of the miscellaneous trade proposals announced in the January 31st Advisory issued by the Trade Subcommittee of the Committee on Ways and Means.

a) Item 2- Tariff Act of 1930: Definition of "Domestic Industry" and "Like Product" in certain safeguard actions involving perishable agricultural products.

Please find attached a copy of the January 29th letter from Ambassador Chrétien to the Honourable Bill Archer, Chairman of the House Committee on Ways and Means, regarding S. 1463. The letter outlines Canadian concerns that such amendments would be contrary to U.S. obligations under the WTO Agreement on Safeguards and the NAFTA. Those concerns apply equally to H.R. 2795.

b) Item 4- Tariff Act of 1930: Country of Origin Marking for Door Hinges

Attached please find a copy of the Embassy's letter of November 27, 1995 to the U.S. Customs Service in response to a previous Federal Register notice on the matter. The letter expresses the view that Canadian exports of hinges allow the ultimate purchaser in the U.S. to easily determine the country of origin. We understand that Customs is currently reviewing those comments received in response to the notice and will be publishing a final determination in the near future.

c) North American Free Trade Agreement: Reliquidation of Certain Customs Entries

The Subcommittee proposes to provide for the liquidation or reliquidation of certain footwear entered into the

.../2

United States. Attached you will find the Embassy's letter of December 5, 1995, to the Director of Canadian Affairs at the Office of the United States Trade Representative (USTR) seeking the Administration's assistance in reliquidating certain entries of live swine from Canada between April, 1988 and March, 1989. This matter has been raised with representatives of both the U.S. Customs Service (Office of Rules and Regulations)and USTR who have not raised any objection to the request but have indicated the need for a statutory accommodation. (We have provided to you suggested legislative language).

Finally, we would like take to this opportunity to raise another matter, that is, country of origin marking for pipes and tubes.

Under U.S. Customs law (section 1304 of the Tariff Act of 1930), imported articles are required to be marked with the country of origin. Section (a)(3) sets out a list of circumstances in which articles are exempt from marking. Annex 311 of the North American Free Trade Agreement (NAFTA) requires the Parties to exempt articles from marking in a list of circumstances which is generally similar to the exemptions provided under U.S. law.

Section 1304(c) sets out specific methods of marking of pipes and pipe fittings or iron or steel. It further specifically states that "... no exception may be made under subsection (a)(3)...". Consequently, these products must be marked even if imported in the circumstances where an exemption would normally apply. Section 207 of the NAFTA implemented certain U.S. NAFTA obligations with respect to country of origin. Section 207 specifically amended the pipe marking statute to add paint stencilling as an allowed statutory method of marking. However, the implementing legislation did not amend the statute so as to permit pipes and pipe fittings or iron or steel to benefit from the exemptions enumerated in Annex 311 of the NAFTA.

In order to fully comply with Annex 311 of the NAFTA, section 304 of the 1930 Tariff Act would require amendment, most likely of subsection (c) covering pipes specifically, in order to remove the reference "... no exception may be made under subsection (a)(3) of this section". The foregoing amendment could be made in respect to all imports of pipes and pipe fittings into the U.S. or restricted to imports from NAFTA countries.

Sincerely,

for Michael R. Leir
Minister-Counsellor
Congressional and Legal
Affairs

Canadian Embassy Ambassade du Canada

501 Pennsylvania Avenue, N.W
Washington, D.C. 20001

January 29, 1996

The Honourable Bill Archer
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Dear Mr. Chairman,

I am writing to bring to your attention the serious concerns of the Governm of Canada about the trade restrictive nature of S.1463 which I understand the House of Representatives will be considering tomorrow. This legislation amends the definition of "domestic industry" and the concept of "like or directly competitive article" in U.S. trad law in a manner contrary to the provisions of the WTO Agreement on Safeguards and th NAFTA.

The amendments would have the effect of unilaterally lowering the thresho for finding injury or threat thereof to the domestic industry. If applied in an investigatio these proposed amendments could restrict legitimate trade between Canada and the Unite States contrary to United States' international trade obligations and would set a dangerou precedent for other countries to follow against Canadian and U.S. exports.

I urge you to give consideration to these issues in your deliberations on th legislation.

Yours sincerely,

Raymond Chrétien

Raymond Chrétien
Ambassador

Canadian Embassy Ambassade du Canada

501 Pennsylvania Ave., N.W.
Washington, D.C. 20001

27 November 1995

U.S. Customs Service
Regulations Branch
Office of Regulations and Rulings
1301 Constitution Avenue, N.W.
(Franklin Court)
Washington, D.C. 20229

This letter refers to the Federal Register Notice of September 27, 1995, addressing "Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Hinges".

The petitioner, Hager Hinge Company, has requested that the U.S. Customs Service require imported metal hinges to be marked individually by a die sunk, mould or etching process on the exposed surface of the hinge. The company further states that the country of origin markings on the containers in which the hinges are imported is not sufficient because the hinges are often removed from the containers before reaching the ultimate purchaser.

We submit that Canadian hinges exported to the United States, as currently packaged, allow for the ultimate U.S. purchaser to easily determine the country of origin of the goods. There is no reason to believe that subsequent to importation into the United States these Canadian hinges are removed from their packages before resale. Indeed, the opposite is true, there are many reasons why it is in the interest of the retailers and commercial users to retain the packaging.

Current U.S. Customs country of origin marking requirements for metal hinges stipulate that markings are to indicate to the ultimate purchaser of the hinges the name of the country of origin. This is provided for in 19CFR Part 134 and in Annex 311 of the NAFTA. The letter and spirit of the regulations contained therein are fully met by Canadian exporters. The petitioner's claims are without merit and would do nothing to further the principles of the country of origin marking requirements, but at the same time would have a

disruptive effect on Canadian exports of hinges to the United States.

According to Canadian hinge exporters, Canadian-made hinges, when sold at retail, are sold in properly marked containers. Canadian hinges are also sold to building contractors or manufacturers, (such as cabinet makers) in properly marked packages. The following reasons outline why Canadian hinges are not removed from their packaging:

- The packages display the certification markings from standards authorities such as "Underwriters Laboratories" (UL). By viewing the certification on the package, consumers can easily determine that the hinges meet certain standards. Commercial users normally buy hinges that comply with certain specifications for use in their projects;

- Packaging is an important aspect in the marketing of hinges. Packaged products are viewed as being of better quality than items sold in bulk;

- Packages provide a container to include instructions for the proposed installation of the hinges. In addition, matching screws are usually supplied with hinges and the packaging provides a vehicle to carry the right type and number of screws together with the hinges;

- Hinges are usually manufactured with a high quality finish for gloss and smoothness. Distributing or displaying hinges without their protective packaging would subject the hinge finish to damage, which would make them both less attractive and less saleable;

- Modern merchandising and inventory procedures require bar coding(UPC). If packages were removed each hinge would have to be fitted with a bar code individually; and

- Removal of the hinges from the packages would be a costly and labour intensive activity.

We note that U.S. law provides sanctions for the removal, defacement or alteration of factual country of origin markings. U.S. buyers of hinges could not obfuscate the country of origin markings on hinges without breaking these laws.

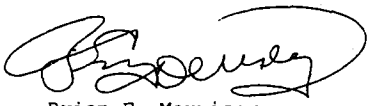
The proposal to mark the exposed surface of hinges would mar the aesthetics of the finished article into which the hinge is incorporated. For example, the use of hinges, marked on the exposed surface, when incorporated into

furniture or quality cabinets would substantially detract from its appearance. NAFTA Annex 311.5(iv) requires an exemption from marking the hinge itself in such circumstances. Therefore, the hinge itself should not be required to be marked so as to indicate to the buyer the country of origin of the hinge.

The petitioner refers to hinges used in the construction of houses and argues that the purchaser of such houses cannot determine the origin of the hinges. As set out in Annex 311 of the NAFTA, the ultimate purchaser is the last person in the territory of an importing Party that purchases the good in the form in which it was imported and such person need not be the last person to use the good. In the example given of the builder who purchases the hinge in its package showing the country of origin, he is clearly aware of its origin. He then uses it in the construction of the house which clearly substantially transforms the hinge. There is no country of origin requirement for the purchaser of the house containing the hinge to view the country of origin of the hinge. The ultimate purchaser of the hinge is the builder and not the house buyer.

We believe the petitioners allegations to be unfounded. We urge you to deny the petitioners request to the extent that it relates to imports from Canada.

Yours sincerely,



Brian E. Morrisey
Minister-Counsellor

Canadian Embassy Ambassade du Canada

501 Pennsylvania Avenue, NW
Washington, DC 20001

December 05, 1995

Mr. Claude Burcky
Director, Canadian Affairs
Office of the
United States Trade Representative
Winder Building
600 17th Street, N.W.
Washington, D.C. 20506

Dear Mr. Burcky,

This letter is to seek your assistance in furthering our efforts for a refund of the overpayment of U.S. countervailing duties paid on certain shipments of Canadian live swine exported to the United States during 1988-1989.

As indicated to you during our recent meeting, in 1988 the U.S. Department of Commerce issued instructions to the U.S. Customs Service to suspend the liquidation of entries of live swine from Canada pending the final determination of the actual countervailing duty by the Department's 1988/89 administrative review (Case number C-122-404). During this review period, importers were required to pay a deposit of 4.39 cents per pound and 2.2 cents per pound (during the last quarter of the year) pending the final duty determination.

In 1993, an FTA Binational Panel determined that the final countervailing duty rate for entries during this review period should be 0.51 cents per pound, a decision upheld by the Extraordinary Challenge Committee (ECC). However, in 1992, (before the conclusion of the Binational Panel review) the U.S. Customs Service, for reasons unknown, assessed duties on the entries at the aforementioned higher rates. Unfortunately, some exporters paid these supplemental invoices, not realizing that in doing so, the entries would be liquidated. Thus, they were unable to collect the refunds owing on the original deposits when the panel process was completed.

Under normal circumstances, section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514) provides the legal authority for importers and interested parties to "protest" Customs decisions relating to imported merchandise. Section 520 (c)(1) requires that protests be received within 90 days of the entry liquidation date. Unfortunately, the aforementioned rate discrepancy of the liquidated entries was not discovered by the

Canadian exporters until well past the 90-day protest period, resulting in an overpayment of approximately $200,000.

The dispute settlement provisions of the Canada-U.S. Free Trade Agreement and the NAFTA have provided industries on both sides of our border with increased assurances of predictability and fairness in the operation of our respective trade laws. In view of the fact that no action should have been taken by Customs prior to a final duty determination by the Binational Review Panel and ECC, we believe that the overpaid duties should be refunded.

We have already discussed one possible solution to this problem, i.e. statutory relief, with both Customs and House Ways and Means staff. I have attached, for your information, a copy of the proposed language we provided to House Ways and Means Trade Subcommittee staff that we suggested could be incorporated in a future legislative vehicle.

As you know, a number of legislative precedents exist in support of our request. For example, Section 113 of the Uruguay Round Implementing legislation provides statutory relief for liquidated entries of "agglomerated stone tiles" and "clomiphene citrate". In more recent experience, the Chairman of the House Ways and Means Trade Subcommittee offered a bill that would not only reliquidate entries of "Warp knitting machines", but would refund any outstanding duties and interest.

We would appreciate your assistance in this matter and look forward to working with you to ensure that these Canadian exporters are not unduly penalized.

Yours sincerely,

David Plunkett
Counsellor (Trade Policy)

Attachments

c.c. DFAIT/UER/Rush
U.S. Customs/Seidel
U.S. Treasury/Simpson
U.S. Department of State/Jeff Baron
House Ways and Means Trade Subcommittee/
Stephen Whittaker
Cdn Embassy/Billy Hewett

RELIQUIDATION OF CERTAIN ENTRIES.

(a) RELIQUIDATION. - Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, and subject to subsection (b), the Secretary of the Treasury shall reliquidate certain entries (which were liquidated prior to the establishment of final results) in accordance with the results finally established with respect to the Department of Commerce's administrative review (case number C-122-404), covering the period April 1, 1988 through March 31, 1989.

(b) REQUESTS. - Reliquidation may be made under subsection (a) with respect to an entry only if a request therefor is filed with the Customs Service within 180 days after the effective date of this provision that contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

Eugene Capron
9960 Lee Road
Boynton Beach, Florida 33437

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a mechanic for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Eugene Capron

Melonie Catalano
218 Foxtail Dr. # E
West Palm Beach, FL 33415
(407)439-5431

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Mosely,

COMMENT

My husband and I both come from large farming families. We migrate back and forth during the Winter growing season in Florida and also in the Summer growing season up north in Western New York. We have been doing this for 10 years and rely heavily on our Florida income.

If the dramatic increase in Winter vegetables being shipped into the country from Mexico does not stop soon. We along with thousands of our fellow employees will be forced out of work.

Can this country really afford to have more and more people collecting unemployment and welfare? I do not think so. Therefore, we need to be recognized as a Florida Winter Vegetable Industry, so we can apply to the International Trade Commission for relief, Which in turn, will help us all keep our jobs.

I strongly support H.R. 2795.

Respectfully yours,

Melonie Catalano

Melonie Catalano

Robert B. Chapman
509 N.E. 2nd Street
Pompano Beach, Florida 33060

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Robert B.Chapman

CLONTS FARMS, INC.

2702 LUST RD. • APOPKA, FLORIDA 32703 • PHONE 407-886-2490

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

COLONIAL FARMS
15940 South Tamiami Trail
Fort Myers, Florida 33908

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: H.R. 2795

Colonial Farms is a partnership that produces winter vegetables. We have been in business for the past 20 years. We have 100 employees.

Our state (Florida) was last to sign for North American Free Trade Agreement (NAFTA). Our senators and congressmen were promised that the winter vegetable industry would be protected from dumping and surges of "below production cost" produce. All the promises have been lies. For the last two season, Mexico has had the key to our border, not only to ship below cost produce, but also have a conduit for hundreds of millions of dollars of illegal drugs. Wake up! Ask yourself, how are all these drugs coming in the United States? Mexico has done little to stem the flow of drugs. Its past president was found to be corrupt for-over 500 million dollars in his foreign bank accounts.

The agriculture business in Florida exceeds 18 billion dollars. It is now in great peril of financial collapse. Our partnership is currently $756,000 in debt due to the uncompetitive prices on produce that NAFTA have created.

Our harvest season begins in October and ends in May, but we are preparing land all summer. We are full-time farmers. We support H.R. 2795. We need a seasonal definition of our industry to apply to the International Trade Commission for relief.

Our situation is desperate to say the least.

Sincerely,

James V. Povia, Jr.

James V. Povia, Jr.
Partner

By permission of The Chairman

Confederación de Asociaciones Agrícolas del Estado de Sinaloa

UNION AGRICOLA REGIONAL DE SINALOA
(Reg. No. 34 de la S.A.G.)

Edificio CAADES
Juan Carrasco 787 Nte.
Aprdo. Postal No. 56
(80000) Culiacán, Sinaloa, México

Tels. 13-10-97, 13-11-97
13-12-97, 13-13-97 y 13-14-97
FAX: (67) 13-01-08
Telex: 665822 CAACME

Culiacán Sinaloa, February 28, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representative
1102 Longworth House Office Building
Washington, DC 20515

Reference: H.R. 2795

Dear Mr. Moseley

Members of CAADES (the Confederation of Agricultural Associations of the State of Sinaloa, Mexico) have been reliable suppliers of tomatoes and other fresh winter vegetables to the North American market for over 60 years. We, therefore, would like to register our concerns about H.R. 2795 sponsored by representative Clay Shaw of Florida. As you know, this legislation would redefine a "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers.

This bill along with several other current and past measures sponsored by the Florida congressional delegation, is aimed at curtailing competition in the winter fresh vegetable market. We believe that is the contrary to the spirit and the letter of both the NAFTA and the WTO and that it would set a terrible trade policy precedent that might encourage other countries with "seasonal industries" to invoke similar measures against exports of perishable U.S. products.

Confederación de Asociaciones Agrícolas del Estado de Sinaloa

UNION AGRICOLA REGIONAL DE SINALOA
(Reg. No. 34 de la S.A.G.)

Edificio CAADES
Juan Carrasco 787 Nte.
Apdo. Postal No. 56
(80000) Culiacan, Sinaloa, Mexico

Tels. 13-10-97, 13-11-97
13-12-97, 13-13-97 y 13-14-97
FAX (67) 13-01-08
Télex: 665622 CAACME

In addition the "season" which the Florida growers seek to define is the precise period in which the growers in our region of Mexico are active in the market. This precise "season" makes no economic sense in relation to the time period in which tomatoes are grown in the United States or in Florida or in Mexico. Such a custom-tailored "season" has no justification under the principles of market competition or under the rules of international trade.

Further, the advent of the NAFTA has encouraged several developments that were already underway in the North American fresh winter industry that could be adversely affected by a bill such as H.R. 2795.

First, we in Sinaloa have invested in new varieties and equipment to increase the quality and wholesomeness of our produce. Consumers in both of our countries have benefited. In your country, there has been a particular appreciation of our vine ripened tomatoes that are not available elsewhere during winter months. Our vegetables are subject to all the same Food and Drug Administration and U.S. Department of Agriculture inspections as U.S. vegetables.

Second, there has been a further integration of the North American fresh fruit and vegetable markets, U.S. companies are supplying us with seed, fertilizers, packing materials, machinery and equipment. U.S. capital is being invested in vegetable production in our state of Sinaloa and elsewhere in Mexico. Our winter shipments fill a void in the U.S. market whenever Florida crops are hit by either periodic late summer storms or winter freezes.
And, U.S. fruit and vegetable growers have witnessed increased sales in the Mexican market.

H.R. 2795 is the contrary to this increased market integration that benefits growers and consumers in our two countries.

Sincerely yours,

Luis Cárdenas
Chairman of the Board
CAADES

SHEARMAN & STERLING

FAX: 202-508-8100

801 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2604
202 508-8000

ABU DHABI
BEIJING
BUDAPEST
DÜSSELDORF
FRANKFURT
HONG KONG
LONDON
LOS ANGELES
NEW YORK
PARIS
SAN FRANCISCO
TAIPEI
TOKYO
TORONTO
WASHINGTON, D.C.

WRITER'S DIRECT NUMBER:

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Reference: H.R. 2795

Dear Mr. Moseley:

We are writing on behalf of CAADES (The Federation of Agricultural Associations of the State of Sinaloa, Mexico) to express our concerns with respect to H.R. 2795, a bill that would amend the definition of "domestic industry" under the U.S. trade laws to permit safeguard measures to be imposed for the protection of "seasonal industries." We understand that other parties have submitted comments pointing out that the proposed legislation, if enacted, would violate the World Trade Organization Agreement on Safeguards. We shall not address that issue here, but rather shall address briefly the factual bases for the proposed legislation.

It is our understanding that this legislation was designed to protect the Florida tomato industry, which has claimed that it is a "seasonal industry" that has suffered as a result of competition from Mexico. The facts do not support that claim.

We are attaching a graph showing Florida's average share of the U.S. tomato market each month during the calendar year. As that chart demonstrates:

- The Florida tomato growers are not a "seasonal industry;" they produce throughout the calendar year.

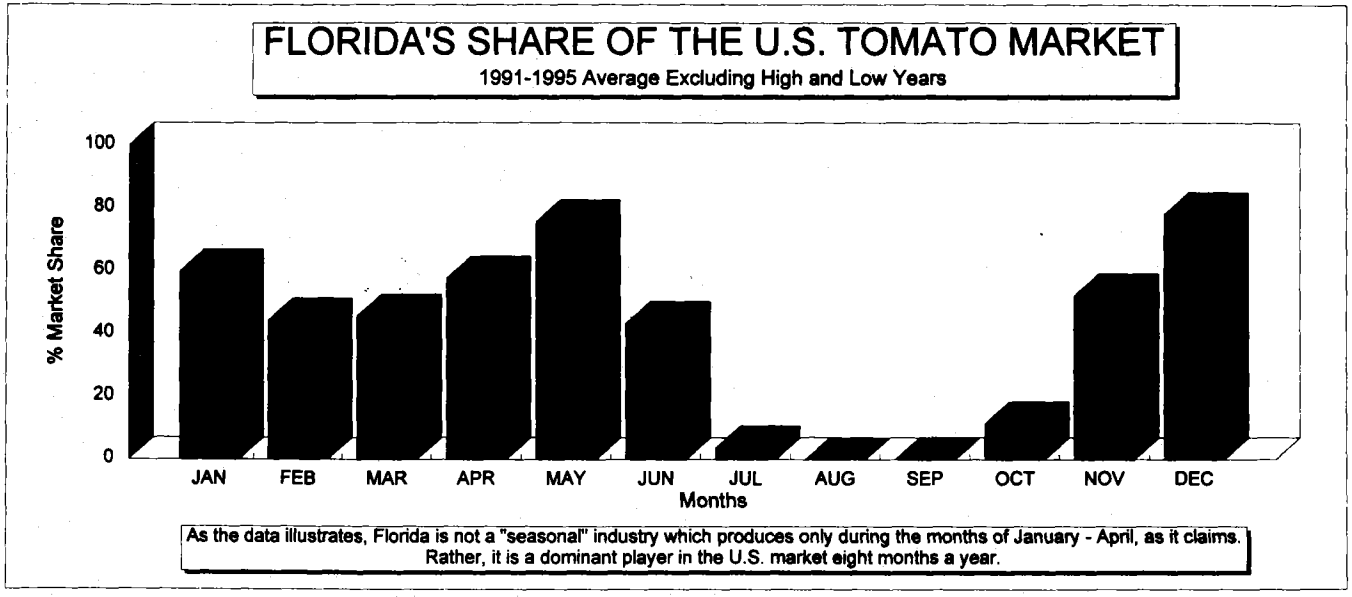
- Not only do they produce throughout the year, they are the dominant producers and suppliers of fresh tomatoes in the U.S. market eight months of the year.

The proposed legislation would create an artificial industry. It would require the International Trade Commission to ignore Florida production during most of the year and to concentrate only on its production during the few months when it faces competition from Mexico.

Respectfully submitted,

Thomas B. Wilner
Shearman & Sterling
Counsel for CAADES

Enclosure


FLORIDA'S SHARE OF THE U.S. TOMATO MARKET
1991-1995 Average Excluding High and Low Years
% Market Share
100
80
60
40
20
0
JAN
FEB
MAR
APR
MAY
JUN
JUL
AUG
SEP
OCT
NOV
DEC
Months
As the data illustrates, Florida is not a "seasonal" industry which produces only during the months of January - April, as it claims.
Rather, it is a dominant player in the U.S. market eight months a year.

FLORIDA'S SHARE OF THE U.S. TOMATO MARKET

1991 - 1995 Average Excluding High and Low Years

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
1991	70.69%	45.68%	48.70%	54.20%	80.36%	34.07%	0.00%	0.00%	2.40%	21.16%	54.35%	89.41%
1992	72.21%	71.17%	78.96%	88.51%	90.52%	50.35%	8.23%	0.00%	0.21%	25.97%	53.90%	90.94%
1993	53.35%	42.83%	48.67%	55.53%	68.84%	62.08%	3.17%	0.00%	0.00%	17.45%	49.87%	78.35%
1994	55.33%	44.41%	39.25%	63.30%	77.66%	39.47%	3.53%	0.00%	0.00%	18.77%	52.77%	66.34%
1995	36.59%	25.60%	24.19%	37.45%	67.23%	40.15%	4.47%	0.00%	0.00%	12.31%	29.80%	54.61%
AVG	59.79%	44.31%	45.54%	57.67%	75.62%	43.32%	3.73%	0.00%	0.07%	11.48%	52.18%	78.04%

Source: USDA/AMS

STATEMENT OF CONSUMERS FOR WORLD TRADE ON REDEFINING DOMESTIC INDUSTRY IN SAFEGUARD ACTIONS (H.R. 2795)

Consumers for World Trade (CWT) is a national, non-profit, non-partisan organization established in 1978. It is concerned with the economic interest of consumers in international trade policy and with enhancing consumer awareness of the benefits of international trade. This statement is being submitted in response to Chairman Philip M. Crane's request for comments on H.R. 2795: "a bill to change the definition of 'domestic industry' and 'like product' in safeguard actions involving perishable agricultural products."

Consumers for World Trade is strongly opposed to HR2795. We are gratified that unlike its Senate counterpart, S1463, this bill is being given Committee consideration and that the views of interested parties are being solicited.

According to Section 202 of the 1974 Trade Act, the legal definition of "domestic industry" requires that producers seeking relief through a safeguard action account for a major portion of total domestic production of the product. The change of definition proposed in S1463 and HR2795, on the other hand, would recognize separate seasonal industries as domestic industries. These proposals are designed to protect from competition not an entire industry but a small section of an industry - in this case, the Florida winter tomato producers seeking protection from Mexican imports though the Florida producers are able to provide only a small portion of the tomatoes needed to satisfy domestic consumption.

Of foremost concern to Consumers for World Trade is the fact that consumers will, as usual, be the bottom line victims of misguided protectionist measures. Limiting the availability of a product through the erection of a trade barrier artificially increases prices and allows less choice in the marketplace. In this case, the situation would, of course, be exacerbated if domestic production were also affected by inclement weather conditions.

Neither the WTO agreement on safeguards nor the NAFTA safeguard mechanism recognize "seasonal industries." Changing the U.S. definition would create a lack of conformity between U.S. law and the two agreements. This would not only cause serious disruption to trade patterns but also would abandon the principles previously agreed to by the U.S. in the WTO and NAFTA.

HR2795 would set a dangerous precedent. Trade disruption would not be limited to products from Mexico. Other countries would be affected as well. In fact, concerns have already been informally raised by such trading partners as Canada, Venezuela, Chile, Australia, New Zealand, Guatemala, Brazil, and Malaysia. Should their exports be endangered, it is possible that other countries would opt to enact similar changes in their own laws and retaliate against U.S. agricultural exports. In any case, since the WTO and NAFTA safeguard rules require compensation, U.S. agricultural and other exports are bound to be negatively affected.

Finally, it is difficult to rationalize how the U.S. could consider turning its back on the principles of agreements for which it fought long and hard while, at the same time, taking aggressive steps to ensure that such agreements are complied to by other trading nations.

It is for these reasons that Consumers for World Trade urges the Ways & Means Subcommittee on Trade to oppose HR2795.

GORDON COOPER
12940 Acme Dairy Road
Boynton Beach, Florida 33437

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

My family has been in agriculture in Palm Beach County, Florida for forty (40) years. Over those years, we have encountered natural disasters, marketing surges, etc. However, it becomes apparent that the present Mexican posture of dumping produce at below our production costs appears to be the coup de grace.

It would appear that should you fail to recognize our plight and balance the scales, that we shall no longer be farming produce. I strongly urge your support on H.R. 2795.

I SUPPORT H.R. 2795.

Very truly yours,

GORDON COOPER

GC:pm

Bill W.Cupstid
3464 N.W. 43rd Place
Lauderdale Lakes, Fla. 33309

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Bill W. Cupstid

Bill W. Cupstid

Gargiulo LP™

February 23, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my thirty employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1 yet the Florida growers wish to set April 30 as the end of the "import season" --then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

DEL CAMPO GARGIULO, LLC

Roy Roderick

Roy Roderick

GROWERS SHIPPERS IMPORTERS EXPORTERS
Del Campo Gargiulo, L.L.C. 35 N. Calle Christina Rio Rico, AZ 85648 P.O. Box 6550 Nogales, AZ 85628 (520) 281-4733 Fax (520) 281-4345

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Moseley:

I am a Florida winter vegetable farmer. My business has been in existence for 67 years. We are a family business and currently have over 500 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans are able to dump produce into the U.S. due to the peso devaluation. This drives prices down to as little as 20% of our production costs.

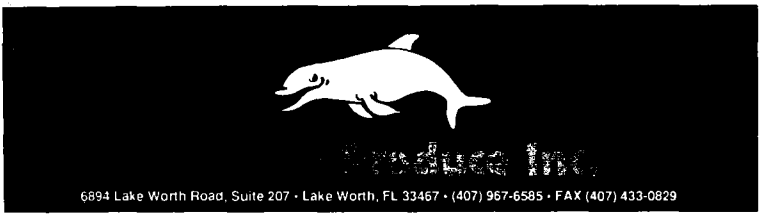
Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, we cannot even apply to the International Trade Commission for relief.

I support H.R. 2795.

Sincerely,

Paul J. DiMare

DiMARE. P.O. Box 900460 • Homestead, FL 33090-0460 • Office (305) 245-4211 • Fax (305) 246-9740



6894 Lake Worth Road, Suite 207 • Lake Worth, FL 33467 • (407) 967-6585 • FAX (407) 433-0829

February 29, 1996

Philip Moesley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D. C. 20515

Re: H. R. 2795

I am a Florida winter vengetable broker. My family business has been in existance for eleven (11) years and employs five (5) people.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability to continue brokering in the state of Florida.

The Mexicans dump produce below the cost of production due to the peso devaluation which is driving prices down to as little as 50% of the grower's production costs.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, the growers cannot even apply to the International Trade Commission for relief.

I support H.R. 2795.

Sincerely,

Roger G. Hoffmann
President

Doran & Co.
400 S.W. BOCA RATON BOULEVARD
POST OFFICE BOX 250
BOCA RATON, FLORIDA 33429-0250
TELEPHONE (407) 395-1102
FAX (407) 392-3968

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H.R. 2795

Dear Representative Moseley:

We are a supplier of service to the Florida winter vegetable industry. We have been in business 32 years. We have twelve (12) employees.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

I support passage of H.R. 2795.

Very truly yours,
DORAN & CO. INSURANCE

Peter F. Doran

DuBois Farms Inc.
P.O. DRAWER 189
BOYNTON BEACH, FLORIDA 33425
407-496-3000

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

I am a Florida winter vegetable farmer. My business has been in existence for sixty-three (63) years. We are a family business and have approximately six hundred (600) employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as fifty (50%) percent of our production cost.

Our production of winter vegetables is between September and May, therefore, the guidelines as they exist, fail to provide us with an opportunity for recourse with the International Trade Commission.

I SUPPORT H.R. 2795.

Very truly yours,

Robert M. DuBois, Sr.

ROBERT M. DuBOIS, SR.

RMDSr:pm

(SIMILAR LETTERS RECEIVED FROM 10 OTHER INDIVIDUALS)

Evans Oil Company
Chevron, Mobil, Jobber
3170 South Horseshoe Drive
Naples, Florida 33942
941-262-4124
Fax 941-262-7861

Mobil

Chevron

FEBRUARY 28, 1996

PHILIP MOSELEY, CHIEF OF STAFF
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515

Re: H.R. 2795

WE AT EVANS OIL COMPANY SUPPLY EQUIPMENT AND FUEL TO THE FLORIDA WINTER VEGETABLE INDUSTRY. WE HAVE BEEN IN BUSINESS THIRTY SEVEN YEARS. WE HAVE FIFTEEN EMPLOYEES.

THE DUMPING SURGES AND INCREDIBLE VOLUME OF MEXICAN WINTER VEGETABLES SPURRED BY THE PESO DEVALUATION IS DESTROYING THE FLORIDA WINTER VEGETABLE INDUSTRY AND MY BUSINESS.

H.R. 2795 WOULD ALLOW US TO APPLY TO THE INTERNATIONAL TRADE COMMISSION FOR RELIEF. WE SUPPORT PASSAGE OF H.R. 2795.

SINCERELY,

PETER M. JOHNSON, V.P.
EVANS OIL COMPANY

FARM OP, INC.
11900 SIX L'S FARM RD.
NAPLES, FLORIDA 33961
(941) 774-6936

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

RE: Bill H.R. #2795

Dear Sir:

Farm Op, Inc. is a Florida Winter vegetable producer. Our family business has been growing vegetables in Florida for 40 years. We employ 2000-2500 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Rick Lipman
Vice President

RL:lmd

FARMERS SUPPLY, INC.

FAMILY OWNED INDEPENDENT DEALER

February 29th, 1996

Philip Mosely, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

RE: HR 2795

Dear Mr. Moseley,

My family has supplied chemicals, seed and fertilizer to vegetable farmers in South Florida since 1964. We employ five people. Never before have I picked up a pen to write to Washington or Tallahassee regarding any legislation , but now I must.

I support the passage of HR 2795 most urgently. If something is not done to halt the dumping of Mexican produce into the winter market within the next seven months, our entire industry will be devastated along with all the suppliers. For many, it is already too late.

Without exaggeration, I say that our industry, and my business, will cease to exist in twenty-four months unless action is taken now. HR 2795 would at least allow us to apply to the ITC for relief.

Sincerely,

Fred Heald

710 BROWARD ST. • IMMOKALEE, FLORIDA 33934 • (813) 657-8254 • FAX 813-657-2005

February 27, 1996

The Honorable Philip M. Crane
Chairman, Trade
Subcommittee of the Ways and Means Committee
1104 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

The Florida Bell Pepper Growers Exchange has concerns about the future of § 201 to adequately address the issue of temporary relief for perishable seasonal agricultural industries.

The opportunity to modify § 201 by the passage of HR 2795 sponsored by Representatives Shaw and Canady would provide very specific changes. These changes would provide a NAFTA & WTO consistent remedy for seasonal industries directly harmed by imports.

These changes do not alter the exhaustive agency investigation or the difficult standard of "serious" harm required under existing § 201.

Legitimate trade remedies should be available to all domestic agricultural producers. The passage of HR2795 would make those remedies possible for qualifying seasonal perishable products.

Thank you for your consideration and hopefully your support on the important issues.

Sincerely,

Reginald L. Brown, Manager
Florida Bell Pepper Growers Exchange

cc: Subcommittee, House Ways and Means Committee

RLB/mb

4401 E. Colonial Drive • P O. Box 140155 • Orlando, Florida 32814-0155 • (407) 894-1351

Florida Citrus Mutual

TELEPHONE (813) 682-1111 · P. O. BOX 89 · LAKELAND, FLORIDA 33802

BOBBY F. BLACKWELL
EXECUTIVE VICE PRESIDENT
AND
GENERAL MANAGER

March 1, 1996

Representative Phil Crane
Chairman, Trade Subcommittee
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Request for Comments on Miscellaneous Trade Proposals: Definition of Domestic Seasonal Industry Under Section 201/202 of the Trade Act of 1974, as amended

Dear Mr. Chairman:

This submission is made on behalf of Florida Citrus Mutual grower members, in response to the Subcommittee's invitation for comments on certain miscellaneous trade and tariff measures (TR-17, January 31, 1996). Florida Citrus Mutual is a voluntary cooperative association of more than 11,867 growers, whose members account for approximately 75% of the citrus fruit grown in the United States, and 90% of the citrus fruit grown for processing. Florida Citrus Mutual's members grow citrus fruit for both processing and for fresh consumption. The citrus industry employs, directly and indirectly, approximately 144,000 people in the state of Florida, and generates approximately $8 billion annualy to Florida's economy. Therefore, Florida Citrus Mutual has a strong interest in the continued vitality and effectiveness of the trade relief laws designed to prevent injury to domestic agricultural farmers as a result of imports which, in many cases, are not competing on the same terms with U.S. growers.

Florida Citrus Mutual supports H.R. 2795, introduced by Representatives Shaw, Canady, McCollum, and Thurman. This bill would amend Section 202 of the Trade Act of 1974, 19 U.S.C. 2252(c)(4), to permit the U.S. International Trade Commission to define the scope of a domestic industry to consist of growers of a perishable agricultural commodity during a particular growing season. It would require that the like domestic product be limited to the perishable agricultural product grown during that season, and that the imported products be limited to those which are imported during that season.

The reason for the proposal is that the Florida winter tomato industry was denied relief in 1995 from massive levels of low-priced imports from Mexico, under the current terms of Section 202, when the ITC determined that the domestic industry consisted of all growers of tomatoes, regardless of the season in which

grown. Fresh Winter Tomatoes, ITC Inv. No. TA-201-64 (April 1995). This decision was incorrect due to the fact that the Florida Winter Tomato industry is a distinct seasonal industry, and its import competition is likewise seasonally distinct. The proposed amendment would establish parameters for finding that there is a seasonal industry, and permit recognition of the commercial reality for thousands of American farmers, that their product is sold only in a defined season, and competes only with certain imports also grown and sold in that defined season.

This amendment would effectuate the intent of the special provisions incorporated at Section 316 of the NAFTA implementing legislation, which provided for monitoring of imports of tomatoes and peppers, in order to facilitate fast-tract relief for growers of perishable agricultural commodities in the event they suffered injury from NAFTA imports. It was clear that the Administration and Congress intended that this type of relief be available specifically to domestic growers in the Florida seasonal industry, since these provisions were included in the NAFTA legislation largely in response to their concerns. See H. Rep. No. 103-361, Part 1 (1993), to accompany H.R. 3450, the North American Free Trade Agreement Implementation Act, at p. 60-61. The failure of the ITC to provide such relief the first time it was called upon to do so after the enactment of the NAFTA legislation evinces a critical need to conform the provisions of the statute to the intent of Congress.

We understand that some objections to these amendments have been voiced by certain U.S. exporters (apparently coordinated by Mexican tomato exporting interests), based on concerns that such a change in the law might result in retaliatory measures by Mexico. Florida Citrus Mutual believes these concerns to be misplaced. The proposed amendment would simply permit a seasonal industry to be considered, but would not require a finding of injury, nor require the imposition of additional tariff measures. Those elements of a Section 201 investigation would still have to be proven, using the traditional bases of economic analysis. Only if tariff measures are imposed, will there be any issue of foreign retaliation or compensatory measures. Article XIX of the General Agreement on Tariffs and Trade (GATT 1947) requires that if safeguard measures are taken, the country imposing those measures must offer equivalent compensation to the affected exporting countries, or that country may take appropriate action. Only after safeguard measures have been imposed and compensation offers have failed, may the affected country retaliate; in fact, under the Agreement on Safeguards of the Uruguay Round Agreements, Article 8.3, retaliatory measures may be taken only after three years.

Likewise, even the Emergency Action provisions of the NAFTA permit retaliation only after provisional relief has been imposed and the parties are unable to agree on compensation. Article 801.4, North America Free Trade Agreement.

Furthermore, there is nothing in the GATT safeguards provision which precludes the definition of a domestic industry on a seasonal basis. Article 4.1(c) defines the industry by reference to "like or directly competitive products," which may consist entirely of domestic production within a particular season. If an affected exporting country disagrees that the change in domestic law is consistent with international agreements, it must follow the dispute resolution provision of the GATT (or the NAFTA, depending upon the basis for the safeguard action) prior to taking retaliatory action.

Therefore, the Committee should disregard any alarmist objections to these amendments on the grounds that they might create an independent basis for retaliation by Mexico. The amendments are consistent with GATT and NAFTA, and simply arm the current statute to facilitate the Congressionally mandated opportunity for relief, but do not preordain such results, nor sanction retaliation.

Florida Citrus Mutual suggests that the Subcommittee modify the amendment to make the finding of a seasonal, perishable product domestic industry mandatory, rather than discretionary, when the other criteria are fulfilled. As drafted, this provision permits decisions by the Commission on whether the producers sell "all or almost all" of their product in a given growing season, and whether "the demand for the article is not supplied, to any substantial degree, by other domestic producers of the article who produce the article in a different growing season." If these criteria are fulfilled, that should be sufficient to limit the domestic industry definition to the seasonal industry; at that point, the evaluation of the impact of imports on that seasonal industry should not remain discretionary.

For the foregoing reasons, Florida Citrus Mutual urges the Subcommittee to report favorably on H.R. 2795, with the amendment noted above.

Respectfully submitted,

Bobby F. McKown
Executive Vice President/CEO
Florida Citrus Mutual
302 S. Massachusetts Ave.
Lakeland, FL 33802
(813) 682-1111

McK:kb

FLORIDA FARM DEVELOPMENT, INC.
P.O. BOX 2809
IMMOKALEE, FLORIDA 33934
(941) 657-4421

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515
RE: Bill H.R. #2795

Dear Sir:

Florida Farm Development, Inc. is a Florida Winter vegetable producer. Our family business has been growing vegetables in Florida for 40 years. We employ approximately 100 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Bill Lipman
President

BL:lmd

Before the Ways & Means Committee
Subcommittee on Trade
United States House of Representatives

Hearing on H.R. 2795 - A Bill to Amend Section 201 *et seq.* of the Trade Act of 1974

Statement of the Florida Fruit and Vegetable Association

Mr. Michael Stuart
Executive Vice President
Florida Fruit & Vegetable Association
Post Office Box 140155
Orlando, Florida 32814-0155
Tel.: 407-894-1351

March 1, 1996

I. Introduction

The Florida Fruit and Vegetable Association ("FFVA") appreciates the privilege of submitting this statement on behalf of its members in strong support of H.R. 2795. FFVA is a non-profit, agricultural trade organization the mission of which is to enhance the competitive and business environment for producing fruits and vegetables in Florida by effectively managing issues and providing collective services for the benefits of its members. Its membership includes fruit and vegetable growers, packers, and handlers throughout the state of Florida.

The membership of FFVA is actively supporting passage of H.R. 2795 to correct an inequitable administrative application of Section 201 law that results in a denial of relief for some seasonal agricultural industries, even when those industries can show serious harm due to imports.

II. The Vital Need for Statutory Clarification

Florida fresh winter tomato producers have tried, but failed, to obtain essential relief from surges of harmful Mexican imports in the past year. Faced with near financial ruin during last year's winter season, the Florida winter tomato industry filed a petition on March 29, 1995, with the International Trade Commission ("ITC") under Section 202 of the Trade Act of 1974, seeking relief from profoundly increasing volumes of imports from Mexico. The industry further sought, under Section 202(d) of the 1974 law, provisional relief pending the completion of the ITC's full 180-day investigation and 60-day Presidential review period. Despite their urgent need for relief, petitioners were forced to withdraw the case after the ITC's negative provisional relief determination because three ITC commissioners ruled that the Florida winter tomato industry must artificially be grouped and analyzed with *all* U.S. tomato growers, even though those other growers did not produce or sell during the relevant season or compete with the harmful imports.

A. The Inequity and Illogic of a "Product Line" Analysis for Seasonal Industries

In last year's Section 201 proceeding, petitioners, the Florida Tomato Exchange and its members, sought relief from imports of fresh winter tomatoes entering the United States during the months of January through April. Those fresh tomato imports during January through April, and those imports only, were subject to the investigation.

The statute defines the term "domestic industry" to mean:

> "the domestic producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."

19 U.S.C. § 2252(c)(6)(A)(i).

Those Florida tomato producers comprising the Florida Tomato Exchange and its members represent the *entire* fresh winter tomato industry in the United States. They, and they alone, are the U.S. tomato producers during the winter season, January - April. Accordingly, they alone produce the U.S. products that compete with the imports subject to the investigation. On that basis, petitioners logically argued that an industry recognized by commercial market standards as distinct from all other industry segments, based on its unique seasonal nature, should be recognized as distinct for purposes of seeking essential relief under our trade laws. Indeed, the Section 201 statute seemed to require such a finding, since the "domestic industry" to be analyzed by the ITC must be one that *competes directly* with the subject imports. Where the scope of a 201 investigation is limited to imports during a distinct period of time -- framed by a clearly defined agricultural growing season -- and those imports are perishable products with a very limited "shelf-life," the relevant "domestic industry" in such a case must be the industry that produces and sells its products during the same time period.

Two ITC commissioners, Commissioners Rohr and Newquist, agreed based on the following reasoning:

> "Although it may be somewhat unusual to define an industry on the basis of less than full-year production, in this instance, in our view, such a definition more fully realizes the statute's disjunctive mandate that the industry produce an article 'directly competitive' with the imports. Clearly, tomatoes harvested in the U.S. in the summer and fall months do not compete directly, nor for that matter indirectly, with imports which enter the U.S. between January and April."

Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), Pub. 2881 (April 1995) at I-25.

The three-member "majority" acknowledged that the statute on its face does not expressly prohibit a four-month industry definition, but declined to depart from the administratively established "product line" analysis. Following that analysis -- which only takes into account factors such as physical properties of the article, customs treatment, and uses -- the Commission majority insisted on defining the domestic industry as *all* growers and packers of common round tomatoes within the United States during the full calendar year. This artificially expansive interpretation was used even though the record fully demonstrated that product grown outside of the January through April period did not compete with, and thus was not impacted by, the harmful imports.

By so ruling, the majority effectively held that a definable, deeply impacted segment of American agriculture could not avail itself of necessary import relief. On behalf of all winter vegetables that are now feeling the pain of import surges from Mexico and are legitimately entitled to the safety net of U.S. import relief laws, FFVA views this administratively dictated result with strongest alarm and opposition.

B. The Consistency of H.R. 2795 and S. 1463 with Statutory Intent

Nothing in the express language of the statute nor its legislative history indicates that Congress intended to preclude access to relief under Section 201 for seasonal industries that produce perishable agricultural products. Quite to the contrary, legislative history indicates that 201 relief was intended to be accessible to *all* legitimate U.S. industries, *as well as* certain relevant *subsets* of industries. The Senate Report on the 1974 Trade Act explicitly stated that the term "industry" in Section 201 included entities engaged in agricultural

activities. S. Rep. 93-1298, 93rd Cong., 2nd Sess., Nov. 26, 1974; reprinted in *U.S. Code Congressional and Administrative News*, 93rd Congress, Second Session 1974, Volume 4, at 7266. The Report further directs that

> "where a corporate entity has several independent operating divisions, and only some of these produce the domestic article in question, the divisions in which the domestic article is not produced may be excluded from the determination of what constitutes the 'industry' for the purposes of the Commission investigation and finding."

Id. Despite congressional intent that Section 201 relief be made available for all deserving domestic industries *and* relevant portions thereof, Florida vegetable growers in dire need of assistance have *de facto* been denied this recourse by reason of administrative interpretation.

The legislation introduced by Representatives Shaw and Canady, and similar legislation introduced by Senator Graham in the Senate (S. 1463) would remedy the unintended flaw in Section 201 by clearly defining the standing terms to provide recourse to industries producing perishable agricultural products in a distinct season. Legitimate seasonal perishable agricultural industries would no longer be prevented from seeking relief under Section 201 for serious injury caused substantially by increased imports.

III. The Continued Urgency of Import Relief for Florida Winter Vegetables

Since last year's Section 201 tomato ruling by the ITC, imports of Mexican vegetables have continued to surge. This is the case for virtually every major Florida winter crop: tomatoes, cucumbers, eggplant, peppers and squash. Early this season, Mexican shipments of some commodities were 600% ahead of 1995 shipments for the same period. (*See* attached.)

These ongoing surges have resulted in a dramatic collapse in prices for Florida growers. Many Florida producers cannot recover costs of production for their crops. Hundreds of Florida growers may not survive another season in this marketing environment.

The safeguard relief laws of this country must be made applicable to such circumstances if they are to have meaning to the whole of American agriculture. Moreover, if the laws are not clarified to address seasonal considerations, American consumers will be left in the very near future without a domestic winter vegetable industry, a result Congress surely must want to prevent.

IV. The Full Consistency of H.R. 2795 and S. 1463 With International Principles

The proposed legislation has been criticized by some who would argue that passage of this measure would violate the United States international obligations, and thereby expand protectionism and invite retaliation. No clear explanation has been given in support of these allegations. As USTR will affirm, nothing about this legislation conflicts with the international obligations of the United States. By clearly defining the "domestic industry" in Section 201, the proposed legislation remains consistent with the terms and definitions set out in NAFTA, GATT Article XIX (the "Safeguards" Article), and the WTO Safeguards Agreement.

With respect to the issue of NAFTA-consistency, which often receives special emphasis by the opposition, this legislation would not in any way diminish the rights of Mexico or Canada under NAFTA Article 802 to seek exclusion from any 201 proceeding on the grounds that exports of products from their countries do not account for a substantial share of total U.S. imports or contribute importantly to the serious injury at issue. *See* 19 U.S.C. §§ 3371, 3372.

For all international standards of law, relief under Section 201 would continue to be available only to legitimate domestic industries; a "domestic industry" could not be created simply to qualify for Section 201 relief. Relief under Section 201 would likewise continue to be granted only in those extraordinary cases where harm to the domestic industry is determined to be "serious" and where the relevant imports are determined to be the "substantial cause" of that harm.

Because the proposed legislation would correct the flaw in U.S. law in a limited way consistent with international agreements, there would be no legitimate international basis for foreign countries to "retaliate" against U.S. interests. Thus, any suggestion that retaliation may ensue from these measures is unsubstantiated and simply designed to stimulate opposition among the uninformed.

V. Conclusion

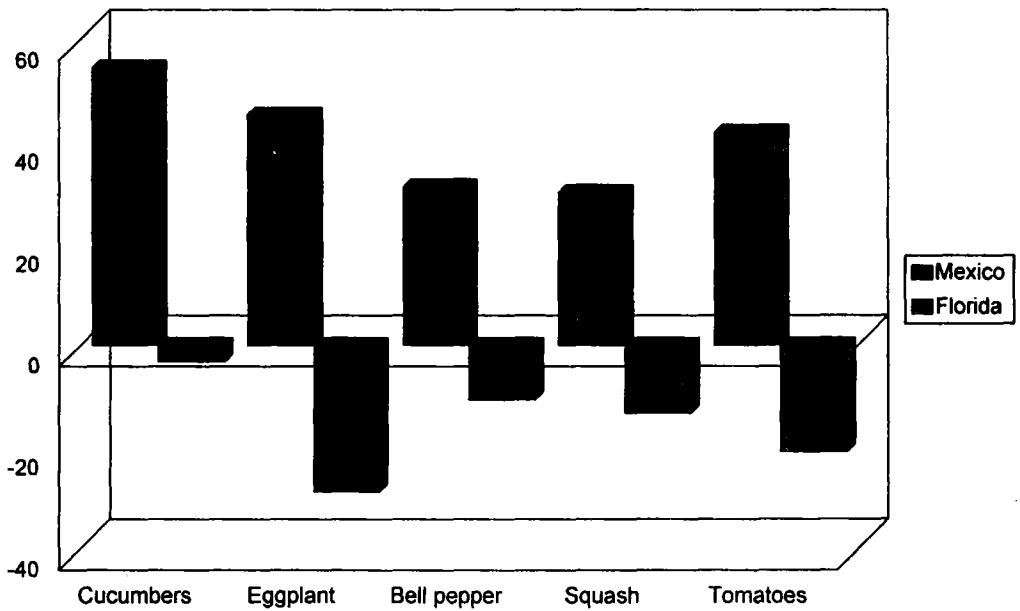
In sum, in order to remedy an unintended flaw in Section 201, which has prevented seasonal producers of perishable agricultural products from seeking legitimate relief from harmful imports, this Subcommittee should promptly approve H.R. 2795 and send it to the floor for action. Circumstances are so critical in Florida that time is of the essence for purposes of obtaining import relief.

FFVA will make itself available to all members of the Subcommittee to answer questions or address concerns about this vital measure.

Attachment

Comparison of Florida/Mexico Fresh Vegetable Shipments

Season to date through February 27: 1994/95 to 1995/96 (percentage increase/decrease)



(source: Federal-State Market News)

Florida Growers Supply, Inc.

P.O. Box 5473
Lake Worth, FL 33466
(407) 968-5039
FLORIDA WATTS
1-800-544-0530

February 28, 1996

Re: House Bill #H.R.2795

Dear Mr. Moseley,

Our company employs 30 people. We sell support products to the farming community here in South Florida. We feel passage of H.R.2795 is critical to the survival of our agricultural economy.

Sincerely,

Keith Cool
General Manager

cc: G. Smigiel

(IDENTICAL LETTER RECEIVED FROM 22 OTHER INDIVIDUALS)

FLORIDA SWEET CORN EXCHANGE

POST OFFICE BOX 140155 | 4401 EAST COLONIAL DRIVE ORLANDO, FLORIDA 32814-0155 | TELEPHONE 894-1351

February 29, 1996

The Honorable Philip M. Crane
Chairman, Trade
Subcommittee of the Ways and Means Committee
1104 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

Seasonal perishable agricultural industries should be able to make appropriate use of the 1974 Trade Act. Section § 201 has failed to provide an appropriate mechanism to seasonal perishable agriculture.

The Administration has requested these modifications to § 201 and supports the proposed changes in the Shaw/Canady bill HR2795. These modifications are believed to be legitimate under current trade laws (NAFTA and WTO).

Your support is a critical element to the resolution of the unfair discrimination to legitimate agricultural producers.

Thank you for your attention and support.

Sincerely,

Reginald L. Brown, Manager
Florida Sweet Corn Exchange

cc: Subcommittee, House Ways and Means Committee

RLB/mb

COMMENTS REGARDING H.R. 2795

**CLARIFICATION OF THE TERM "DOMESTIC INDUSTRY"
IN SAFEGUARD INVESTIGATIONS.
FILED BY
THE FLORIDA TOMATO EXCHANGE
AND
THE FLORIDA TOMATO GROWERS EXCHANGE**

INTRODUCTION

These comments are filed on behalf of the Florida Tomato Exchange ("FTE") and the Florida Tomato Growers' Exchange ("FTGE"), pursuant to the House Ways and Means' Trade Subcommittee January 31, 1996 request for comments on certain miscellaneous trade proposals. The FTE is a non-profit cooperative of first handlers of Florida's fresh winter tomatoes in central and south Florida. The FTE establishes marketing standards and coordinates efforts for the orderly marketing and distribution of the crop. The FTGE is a non-profit cooperative of tomato growers in Florida.

Winter tomatoes for the fresh market are grown principally in central and south Florida during late October to mid-June. FTE and FTGE produce and ship approximately 95 percent of tomatoes grown during the winter season and approximately 50 percent of all tomatoes grown in the United States in a calendar year. This industry generates receipts of $600 million, represents hundreds of growers, thousands of workers, many rural communities, and hundreds of suppliers.

The FTE and FTGE actively support H.R. 2795, which amends the Trade Act of 1974 and the Tariff Act of 1930 to clarify and refine the definitions of domestic industry and like product in investigations involving perishable agricultural products. While the FTE and FTGE believe that the definitions for domestic industry and like product in the current law reasonably encompass the possibility of defining the domestic industry which produces a perishable agricultural product on a seasonal basis, the International Trade Commission ("ITC") has refused to recognize regional industries based on the timing of seasonal, perishable agricultural products. Not being able to bring a simple trade remedy case on behalf of the only producers growing in the U.S. during the winter months defies reality and logic and is fundamentally unfair.

By refusing to recognize the existence of more than one domestic industry in the case of seasonal, perishable agricultural commodities, the ITC has prevented these industries from having their grievances heard. The trade laws were not written to exclude certain U.S. industries from the possibility of remedy. There is nothing in the law or legislative history to indicate that the trade laws were meant to cover less than all of U.S. domestic industries. However, the ITC's decisions on the issue have just such an unintended effect. The proposed legislation is needed to ensure that seasonal, perishable agricultural product industries at least have the opportunity to bring their case before the ITC.

THE CASE OF TOMATOES

In the Spring of 1995, the FTE brought a safeguard action under Section 201 of the Trade Act of 1974 against the import surge of Mexican tomatoes during that season. These imports entered the U.S. at prices well below U.S. prices, Mexico City prices, and even below the cost of production in Mexico. Additionally, over the last two years, Mexican tomato imports have entered the U.S. market in such increased numbers during the critical period in the Florida growing season that many Florida producers have had no choice but to abandon their crop and take a complete loss. Such imports have

had a devastating effect on the Florida industry. In this season alone, it is estimated that thirty percent of the production area planted at the beginning of the season has not been harvested due to low prices forced by Mexican imports. Mexican tomato imports have driven the price for tomatoes so low that it is cheaper to abandon the tomatoes in the field than to harvest the tomatoes and sell them at a price that will not recover the costs of harvesting.

The ITC ruled that Florida tomato growers did not constitute a separate industry for purposes of a 201 investigation. This finding came despite the fact that Florida produces more than 95 percent of domestically grown tomatoes during the winter marketing season, and therefore, there is no other domestic industry during that period. California, the other major tomato growing state, produces primarily during the summer season, and Mexican tomatoes are imported principally during the period when Florida tomatoes are marketed. This fact bears repeating, as it is the central tenet of the proposed legislation. When Florida tomatoes are grown --during the winter season, there are **no** other producers of tomatoes for the fresh market in the United States. Yet the ITC determined that it must investigate injury to the California tomato industry which was not in production, and did not compete with Florida or Mexican winter tomatoes.

The ITC recognized that the perishable nature of fresh-market tomatoes precludes the interchangeability of tomatoes harvested and marketed at different times of the year. The ITC stated that, "[g]iven that a fresh-marketed . . . tomato harvested in any month would not be suitable for consumption after about three weeks, arguably a tomato harvested in one month could not be substituted for a tomato harvested a month later." Fresh Winter Tomatoes, Inv. No. TA-201-64, April, 1995 (Pub. No. 2881). Nonetheless, the ITC determined that under the existing statutory definition, the appropriate domestic industry included all growers and packers of fresh tomatoes during the entire calendar year.

Under this rationale, injury for a domestic perishable agricultural industry is all but impossible to find, because no injury can be shown to the California industry, which does not compete with Mexican tomatoes during the winter growing season, and therefore, cannot be injured by Mexican imports. While recognizing the problem, the ITC held that it was beyond its statutory power to define more than one domestic industry for seasonal, perishable products. As a result of this decision, the tomato producers in Florida, the only producers of fresh market tomatoes in the United States during the winter months, are precluded from using the safeguard trade remedy process.

THE GENERAL PROBLEM

While the problem with Mexican tomato imports was the impetus for the proposed legislation, the language included in the bill does not cover only fresh market tomatoes. The language is broader, in that it pertains to any U.S. perishable agricultural product which is grown in more than one geographic area of the United States at different times of the year. While this may be termed generic legislation, the proposed language pertains only to a small number of agricultural commodities.

Critics of this legislation have attempted to create confusion and concern among **non-perishable** agricultural commodity producers in the United States. However, there is no direct impact of this legislation on non-perishable commodities. Although generic, this legislation covers a small percentage of agricultural commodities. Non-perishable commodity industries would not be affected if any other country instituted similar language in their safeguard provisions. While there is always a possibility of general political reprisal from another country, the grain, beef, pork, and poultry industries, among others, have no direct connection with

legislation affecting **seasonal, perishable** agricultural commodities, and therefore, would not be affected by similar language enacted by another country.

The proposed language merely clarifies what the regional industry exception in the current law already addresses. Certain industry's markets are isolated from the rest of the domestic market due to circumstances which, due to the nature of the product, are beyond the control of the industry itself. Because of those circumstances, the domestic market is divided in terms of supply and demand.

In the case of geographic regionalism, the nature of the product in relation to shipping and organization of the industry usually account for the regional nature of the industry. In the case of perishable agricultural products, the growing season and the short shelf-life of the product combine to create a regional market in terms of time.

If two areas of the country produce the same product, but at different times of the year, and the shelf-life is such that the products of the two regions are not in the market at the same time, then the two regional industries cannot be said to compete. Further, if unfairly traded or surging imports enter the United States only during the time when one of the two U.S. regions is marketing its product, but not when the second is marketing its product, it can never be said that the second industry is being injured by those imports, since the second industry never competes directly with the imports.

CONCLUSION

In summary, the unfair trade laws have failed the Florida tomato industry (and other seasonal, perishable vegetable crops) because of the unique nature of a seasonal, perishable product. While other portions of the trade laws recognize the special situation of perishable products, the ITC does not believe it has the discretion to recognize such distinction for defining the domestic industry. H.R. 2795 will allow the ITC to recognize this distinction and will allow U.S. producers of seasonal, perishable agricultural products the ability to attempt a remedy under U.S. trade law.

The Florida tomato industry is not looking for special treatment, it is only asking that it be allowed to bring a safeguard action. Without the proposed legislation, producers of seasonal, perishable agricultural commodities are precluded from availing themselves of the U.S. trade laws. Substantive trade law violations may have occurred, but unless the law is changed, no opportunity to prove violations is available to the U.S. industry.

FOOD MARKETING INSTITUTE

800 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20006-2701
TELEPHONE: 202/452-8444
FAX: 202/429-4519

February 29, 1996

The Honorable Philip Crane
Chairman
Trade Subcommittee
Ways and Means Committee
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Legislation is pending before your subcommittee, H.R. 2795, which would redefine "domestic industry" as "seasonal industry" when determining eligibility for increasing import barriers. I am writing to object to this proposal.

The Food Marketing Institute (FMI) is a nonprofit association conducting programs in research, education, industry relations and public affairs on behalf of its 1,500 members including their subsidiaries — food retailers and wholesalers and their customers in the United States and around the world. FMI's domestic member companies operate approximately 21,000 retail food stores with a combined annual sales volume of $220 billion — more than half of all grocery store sales in the United States. FMI's retail membership is composed of large multi-store chains, small regional firms and independent supermarkets. Its international membership includes 200 members from 60 countries.

This proposal has been drafted to benefit a small group of Florida winter vegetable producers. For years this group of Florida winter vegetable producers have attempted various ways to eliminate their sole competition -- the Mexican winter vegetable industry. In previous years the Florida industry has claimed Mexico was dumping vegetables into U.S. markets (not so according to the U.S. Customs Department). The Florida industry has alleged violative levels of pesticide residues on the vegetables (not so according to the Food and Drug Administration). And last year the Florida industry petitioned the International Trade Commission (ITC) for safeguard relief from Mexican imports. The ITC rejected their petition and cited bad weather (i.e. -- Hurricane Gordon), not Mexican imports, as the major cause of the Florida industry's problem. The ITC also found that the legal definition of "domestic industry" requires the producers seeking relief to account for a major proportion of domestic production of that product. This legislation, H. R. 2795, responds to the ITC finding by changing the definition which will make it easier for the Florida industry to increase barriers to imports.

In addition to the specific activities of the Florida winter vegetable industry, I urge the subcommittee to look at the ramifications this change will have on U.S. trade relations around the world. Already ten nations have objected to this proposal at the World Trade Organization, pointing out that it is a violation of the accepted purpose of safeguards law.

When a group of "seasonal" U.S. producers (no matter how small) allege injury by import competition, imports could face new protectionistic barriers. Also, other countries could use the "seasonality" principle to restrict U.S. exports. The United States, which is the world's largest exporter, has the most to lose from introducing a new form of protectionism.

According to the U.S. Department of Agriculture, there are 90 growers of Florida tomatoes. It would be unfortunate, indeed, if action taken to protect this small group would result in the far-reaching trade ramifications noted above. U.S. consumers and workers would suffer the consequences.

I respectfully urge the subcommittee to reject this protectionistic legislation.

Sincerely,

Tim Hammonds
President and CEO

FRESH PRODUCE ASSOCIATION OF THE AMERICAS

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Nogales, Arizona 85628-0848

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Humberto Monteverde
President

James E. Beall
Vice-President

Directors
James D. Cathey
Norbert Chamberlain
Chuck Ciruli
John Corsaro
Rosie Favela
Tom Harrison
Martin Ley
Juan Lichter
Alberto Maldonado
Gilbert W. Munguia
Ana Maria Proo
Miguel A. Suarez
Charlie Thomas
Mike Vohland
Jerry Wagner

Lee Frankel
Executive Vice-President

Mike Masaoka Associates
Washington Representative

February 29, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express the opposition of the Fresh Produce Association of the Americas to H.R. 2795, a bill to amend the Trade Act of 1974. If passed, this legislation will make it easier for small, non-representative groups of perishable agricultural producers to artificially create definitions of the "domestic industry" during import relief cases. These cases can allow the President of the United States to impose large import duties and/or impose fixed quotas on imports, and, therefore, they have a tremendous impact on the trade of any particular commodity.

There are several points that I would like the committee to consider before acting on this bill:

1. *The safeguard provisions for perishable agricultural commodities were specifically negotiated and agreed upon by the NAFTA countries and then modified and reaffirmed through the WTO in the Uruguay Round Agreement.* The United States and every other member of the WTO had ample opportunity to object to the definition of a domestic industry. The United States Congress and the President of the United States argued forcefully for these strong and accurate industry definitions so that other countries

could not arbitrarily keep U.S. products out of their markets through the misuse of import relief actions. It is ironic that the United States would now be willing to forsake its position and go back on its promises to the rest of the world simply because a small group of tomato growers in Florida have started a lobbying campaign.

2. *The bill will diminish the ability of the United States to hold other countries to their trade commitments.* The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. For the United States to breach its own obligations under those same agreements only undermines this "enforcement" initiative. U.S. industries hurt by the failure of foreign governments to comply with their trade obligations could find it harder to obtain adequate remedies. In other words, any ruling political party in countries such as Japan, Canada, the nations of the Caribbean Basin, or the countries of Europe might abandon their obligations to accept U.S. products if they think they might be able to win a few votes at election time by campaigning against U.S. products.

3. *The bill may require the United States to make trade concessions that could harm other U.S. exporters.* Both the NAFTA and the WTO require countries imposing safeguards measures to compensate the affected exporting countries by making "concessions having substantially equivalent trade effects." If the countries involved cannot agree on appropriate compensation, then the country in which the product originated has the authority to unilaterally suspend "equivalent" benefits owed the United States, often by raising tariffs on sensitive U.S. products. In fact, when the United States retaliates against a lost export opportunity, the retaliation is almost never reciprocal, rather it is against items the exporting countries value most. When the foreign nation retaliates against the United States, the United States would not have the option on which industry will suffer these new trade burdens.

4. *Safeguard actions apply to all foreign suppliers of that product.* For instance, if California grape growers wished to restrict the imports of Mexican grapes through this safeguard mechanism, grapes from Chile, Canada, and South Africa would all be impacted by the remedies.

5. *The bill will open the import relief mechanism to arbitrary definitions of a seasonal industry that will serve only to obscure reality.* The bill will open the import relief mechanism to ridiculous definitions of domestic industry based on arbitrary determinations of what constitutes a "season" during which the industry would exist. By manipulating the dates of the season that would define the industry, a petitioner may be able to show rising imports for a certain

period even if the overall trend of imports is declining. Furthermore, by arbitrary selection of dates, a tomato plant in Florida might belong to two domestic industries. If a tomato plant is harvested on both April 30 and May 1, and the definition of a domestic industry states that the winter tomato industry ends on April 30, the tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of industry definition based on seasonality or arbitrarily selected dates does not correspond to how agricultural business decisions are made.

6. *No full import relief case under the newly negotiated safeguard provisions regarding perishable agricultural commodities has ever been decided by the U.S. International Trade Commission (ITC).* When the South and Central Florida tomato (Florida) industry brought its case to the ITC last year, the petitioning industry voluntarily withdrew its petition before the investigation had run its course. If the seasonality definition was the reason for the Florida industry not being successful in the provisional relief portion of the case, the Florida industry would not have had the proper standing to represent the tomato industry and the case likely would have been dismissed. However, this did not happen. The Florida industry asked for essentially one to three days of provisional relief. In order to qualify for provisional relief, as opposed to ongoing relief, irreparable and serious harm that can not be remedied under the more permanent relief provisions of the safeguard statutes must be shown by the domestic industry. Testimony of the Florida industry, in fact, stated that the provisional relief would be important only for symbolic purposes but not have much affect on the immediate financial health of the industry. In addition, the Florida industry provided no financial data (such as tax returns, income-and-loss statements, balance sheets, cash-flow statements, etc.) of any individual firm showing that anyone was injured by any cause in the marketplace, much less imports from Mexico. Thus, the Florida tomato industry never made a strong or convincing argument for irreparable injury as a result of imports. This injury factor, not seasonality, was the main reason provisional relief was not granted to the Florida industry. Let us please give the existing mechanisms and laws a chance before amending them to suit the needs of a small, but vocal, special interest group.

Thank you for the opportunity to express the views of the Association on this matter.

Sincerely,

Humberto Monteverde
President, Fresh Produce Association of the Americas

HM H.M. DISTRIBUTORS, INC.
PHONE (602) 281-9534
P.O. BOX 548 NOGALES, ARIZONA 85628-0548

February 29, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 25 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1--yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Humberto Monteverde
President

VALJEAN M. HALEY
10932 Gleneagles Road
Boynton Beach, Florida 33436

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

As a Board Member of the Palm Beach County Farm Bureau, we are concerned with some of the issues regarding Florida winter vegetables which are produced between the months of September and May. One of the most devastating issues confronting our industry has been the dumping of Mexican produce in direct competition. Due to the existing perimeters of the International Trade Commission, there is no way our industry can compete with the unfair dumping, or surges of produce at upwards of fifty (50%) percent below our production cost.

Hopefully, you will give serious consideration to correcting this unfair burden placed upon our industry. The impact of which has driven, and is continuing to drive out many family operations and displace thousands of workers. It is our opinion that the intention was to offer a fair and balanced competition in the free market system, and as the system exists, there are no provisions for such consideration.

I SUPPORT H.R. 2795.

Very truly yours,

Val Haley

VALJEAN M. HALEY

VMH:pm

HARDY BROTHERS OIL COMPANY
1126 HAMMONDVILLE ROAD
POMPANO BEACH, FL.33069
(954)946-3993 (954)946-3997 fax

2-28-96
Philip Moseley Chief of Staff
Committe on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C.20515

Re:H.R.2795
We are a supplier of fuel and lubricants to the Florida winter vegetable industry. We have been in business since 1954.We have 10 employees directly and 15 indirectly.

The dumping,surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H.R.2795 would allow us to apply to the International Trade Commision for relief. We support passage of H.R.2795.

Sincerely,

Jerry L Hardy

(IDENTICAL LETTER RECEIVED FROM SIX OTHER INDIVIDUALS)

Christopher A. Hartman
5196 Sunrise Blvd.
Delray, Florida 33484

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a foreman for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Christopher A. Hartman

Harvey Bros. Farms, Inc.
900 N. Logan Blvd., Naples, Florida 33999
(813) 597-5692

Mr. Philip Moseley,

I'm a concerned Florida winter vegetable farmer. I have had the privilage of being born into and growing up in the agricultural business. We have been incorperated for thirtysix years and are still a family run business. We employ over one thousand workers through the winter months.

In the past two growing seasons there has been a dramatic increase in winter vegetables being shipped into this country. These increases coming from Mexico have destroyed the ability we have to continue farming.

It is my belief that the Mexicans are dumping produce below the cost of production. Cheap labor, less restictions and the devaluation of the peso are just some of the things that drive the prices down. These prices are as low as 50% of our production cost.

The area we farm in Florida is the only production area for vegetables between November and May. Without a seasonal definition of our industry we cannot apply to the International Trade Commission for relief.

My family, our employees and I all support the H.R. 2795 and hope you will also support it and help our problem.

Thank You,
Richard Harvey

Harvey Bros. Farms, Inc.
900 N. Logan Blvd., Naples, Florida 33999
(813) 597-5692

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: HR 2795

COMMENTS

We are a Florida winter vegetable producer. Our business has been in existence for 36 years. We annually employ over 1,000 employees. I am a third generation farmer.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue growing.

The Mexican growers/shippers continue to dump produce below the cost of production. I feel that due to NAFTA and especially the devaluation of the peso that our prices have been driven down to as little as 50% of our production costs.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, we cannot even apply to the International Trade Commission for relief, and without the ability to level out the playing field, we won't be able to continue farming.

I support HR 2795.

Rodney Harvey

HELENA CHEMICAL COMPANY
P.O. Box 839
Immokalee, FL 33934-0839
(941) 657-3141

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Moseley:

We are a supplier of agricultural chemicals to the Florida winter vegetable industry. We have been in business 24 years. We have approximately 80 employees in the State of Florida.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the Peso devaluation is destroying the Florida winter vegetable industry and my business.

H.R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H.R. 2795.

Sincerely,

Jason Ward/LL

Jason Ward
Sales Representative

HOWARD FERTILIZER COMPANY

INCORPORATED

MANUFACTURERS OF SPECIAL FORMULA FERTILIZERS

TELEPHONE (407) 855-1841
WATTS · 800-999-3141
FAX · 407-857-3697

GENERAL OFFICES AND PLANT
8305 SOUTH ORANGE AVENUE
POST OFFICE BOX 593800
ORLANDO, FL 32859-3800

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Sirs:

Howard Fertilizer Company, Inc., is a supplier of fertilizer to the Florida winter vegetable industry. We have been in business for 62 years. We have approximately 100 employees.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business. The industry is now in need of help and so are we.

H.R. 2795 would allow us to apply to the International Trade Commission for relief. I support passage of H.R. 2795.

Sincerely,

Robert M. Howard, Jr.
CEO, Secretary

Jim Hall
IMMOKALEE TIRES, INC.
404 N Fifteenth Street
Immokalee FL 33934

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

INDUSTRIAL CONVEYOR SYSTEMS

18693 S.W. 103 COURT, MIAMI, FLORIDA 33157 PH (305) 255-0200 FAX (305) 251-5934

SOLVING PROBLEMS IN MATERIAL HANDLING
THROUGH PRACTICAL ENGINEERING

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

RE: H.R. 2795

Dear Sir:

We are a family owned business that manufactures and services equipment to the Florida winter vegetable business. We have been in business for over seventeen years here in Florida; and employ 15 employees.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry, and consequently my business.

H.R. 2795 would alllow us to apply to the International Trade Commission for relief. I support passage of H.R. 2795.

Sincerely,

Darrel K. Padgett
President

George Intagliata
5149 Sunrise Blvd.
Delray, Florida 33484

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a mechanic for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

George Intagliata

George Intagliata

January 21st. 1996

Phillip D. Mosely
Chief of Staff - Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely: REFERENCE: H.R. 2795

I am writing to you to express my concerns as a U.S. businessman about H.R.2795. My livelihood and that of my 8 employees depend on the import and export of products between the United States and Mexico. I feat that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the followin reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as wellas the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1- yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Tom Frudden

J.C.'S SUNNY WINTER, INC.
150 N. FREEPORT DR. WHSE #3 • P. O. BOX 341 • NOGALES, ARIZONA 85628 • (520) 287-9146 • L.D. (520) 287-2231

JAMES K. WILSON PRODUCE CO.

DISTRIBUTORS OF:

BRANDS
WILSON'S
DIAMOND J.

MEXICAN TOMATOES — VEGETABLES — CANTALOUPES

TELEPHONE
(602) 281-0550 MAIN
(602) 281-0246 SALES
(602) 281-1000 SALES
(602) 281-0562 WAREHOUSE
(602) 281-4043 FAX

555 W. GOLDHILL ROAD
UNIT A - SUITE #26
P.O. BOX 850
NOGALES, ARIZONA 85628

February 22, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 23 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business. I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. If as a U.S. entrepreneur, will be taken to court and lose my reputations as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1, yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

JAMES K. WILSON PRODUCE CO.

ENRIQUE (KIKI) ARANA,
SALESMANAGER

JAMES K. WILSON PRODUCE CO.

DISTRIBUTORS OF:

MEXICAN TOMATOES — VEGETABLES — CANTALOUPES

BRANDS
WILSON'S
DIAMOND J.

TELEPHONE
(602) 281-0550 MAIN
(602) 281-0246 SALES
(602) 281-1000 SALES
(602) 281-0562 WAREHOUSE
(602) 281-4043 FAX

555 W. GOLDHILL ROAD
UNIT A · SUITE #26
P.O. BOX 850
NOGALES, ARIZONA 85628

February 22, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 23 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business. I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputations as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1, yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

JAMES K. WILSON PRODUCE CO.

James E. Beall. V.P.

JAMES E. BEALL, VICE PRESIDENT

JAMES K. WILSON PRODUCE CO.

DISTRIBUTORS OF:

BRANDS
WILSON'S
DIAMOND J.

MEXICAN TOMATOES — VEGETABLES — CANTALOUPES

TELEPHONE
(602) 281-0560 MAIN
(602) 281-0246 SALES
(602) 281-1000 SALES
(602) 281-0562 WAREHOUSE
(602) 281-4043 FAX

555 W. GOLDHILL ROAD
UNIT A • SUITE #26
P.O. BOX 650
NOGALES, ARIZONA 85628

February 22, 1996

Reference: H.R. 2795

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 23 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business. I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputations as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1, yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

JAMES K. WILSON PRODUCE CO.

Barbara Ann Bon de Beall

BARBARA ANN BON DE BEALL
PRESIDENT

Johnson Plants Inc.

Doug Johnson
President
PO Drawer O
Immokalee, FL 33934

Telephone 941-657-3405
FAX 941-657-7000

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Moseley,

I have been involved in the Florida winter vegetable industry as a grower, packer, and transplant supplier for 24 years. Over the years, my family businesses have supported hundreds of employees and their dependents.

The dramatic increase in winter vegetables being shipped into this country from Mexico has destroyed our ability to continue farming. We cannot compete against the Mexican industry which due to the devaluation of the peso, dump produce into this country below their cost of production. This drives prices down below half our production costs.

Without a seasonal definition of our industry, which is the only American production area for vegetables between the months of November and May, we cannot even apply to the International Trade Commission for relief. I strongly support the passage of H.R. 2795.

Sincerely,

Doug Johnson

Nora Kavashansky
12452 Guilford Way
Wellington, Florida 33414

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Nora Kavashansky

Nora Kavashansky

KELLY DISTRIBUTING INC.
P.O. Box 1582 • Nogales, Arizona 85628-1582
SALES (602) 281-1221 FAX (602) 281-4060
OFFICE (602) 281-1650 FAX (602) 281-9005
WAREHOUSE (602) 281-0493

February 29, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: H.R. 2795

Dear Mr. Moseley:

On behalf of the tomato industry, I am writing to express its concern about legislation that is currently pending before your committee that would redefine "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers. We believe that this measure is contrary to the sprit and, perhaps, the letter of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) accord.

Moreover, much like the U S. Trade Representative's proposal to change the tariff rate quota for import of Mexican tomatoes, this legislation would set a disturbing trade policy precedent and may ultimately harm U.S. exports.

Specifically, this legislation would encourage other U.S. trading partners to adopt similar measures to shield their commodities from U.S. competition. As the world's largest agricultural exporter, we clearly have the most to lose. Our trade policy should be based on the overall interests of all commodities -- not just one.

We urge your committee to examine this bill carefully before it takes action. If it does, we are confident that you will agree that the United States should not risk such protectionism initiative.

Sincerely,

Kelly T. Larey
President

cc: Relevant Members of Congress

Feb-29-96 09:57A P.01

LaBelle Building Supply, Inc.
& READY-MIX CONCRETE
P.O. BOX 756 • 870 S. MAIN ST.
LaBELLE, FL 33935
(813) 675-0111 • (800) 226-0124 • FAX (813) 675-6098

LADES READY-MIX (MOORE HAVEN, FL)
(813) 946-2195 (800) 226-0127

IMMOKALLE READY-MIX (IMMOKALLE, FL)
(813) 657-8381 (800) 226-0126

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

eorgia-Pacific

HWI
the friendly ones

Robert A.Lee
5053 Beachwood Road
Delray, Florida 33484

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a foreman for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Robert A. Lee

Robert A Lee

LIPMAN & LIPMAN, INC.
12955 COUNTY RD. 39
DUETTE, FLORIDA 33834
(813) 776-1387

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515
RE: Bill H.R. #2795

Dear Sir:

Lipman & Lipman, Inc. is a Florida Winter vegetable producer. Our family business has been growing vegetables in Florida for 40 years. We employ approximately 500 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Lou Lipman
President

LL:lmd

THE LIQUID PLANT, INC.

LIQUID FERTILIZER AND CHEMICAL SALES

1000 STATE ROAD 846 EAST
IMMOKALEE, FLORIDA 33934
813-657-3181

February 26, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

RE: H.R. 2795

We are a fertilizer supplier to the Florida winter vegetable industry. We have been in business since 1986. We have fifteen employees.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H.R.2795 would allow us to apply to the International Trade Commission for relief. We support passage of H.R. 2795.

Sincerely,

THE LIQUID PLANT, INC.

by _____
Glenn Finks/owner

by _____
Don Finks/owner

MALENA PRODUCE INC.

Growers • Shippers

P.O. BOX 1868 • NOGALES, ARIZONA 85628-1868
(520) 281-1533 FAX (520) 281-2156

February 26, 1996

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Ref: H.R. 2795

Dear Mr. Mosely:

I am writing to you to exress my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my eight employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for the import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1 -yet the Florida growers wish to set April 30 as the end of the "import season" -then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Ana Astrid Celaya
General Manager

AAC/pel

WILLIAM MAY
5338 Shalley Circle
Fort Myers, Florida 33919

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office Building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

My family has been in agriculture in the State of Florida for thirty (30) years. Over those years, we have encountered natural disasters, marketing surges, etc. However, it becomes apparent that the present Mexican posture of dumping produce at below our production costs appears to be the coup de grace.

It would appear that should you fail to recognize our plight and balance the scales, that we shall no longer be farming produce. I strongly urge your support on H.R. 2795.

I SUPPORT H.R. 2795.

Very truly yours,

William May

WILLIAM MAY

Meat Industry Trade Policy Council
122 C Street, N.W.
Suite 875
Washington, D.C. 20001

March 1, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman:

The Meat Industry Trade Policy Council ("MITPC"), which includes, the American Meat Institute, American Sheep Industry Association, National Cattlemen's Beef Association, National Pork Producers Council, and the U.S. Meat Export Federation, are writing to express our strong opposition to H.R. 2795, a bill that would amend Section 201 of the Trade Act of 1974 by changing the definition of "domestic industry" to include separate "seasonal" industries.

MITPC focuses on the trade policy issues of the beef, pork and sheep industries. Exports are extremely important to the beef, pork, and sheep industries. In 1995, worldwide U.S. exports from these three industries exceeded $4.2 billion. In 1994, the U.S. exported $429.7 million in beef, pork, and sheep to Mexico. Even with the devaluation of the peso, the U.S. exported approximately $205 million in these products to Mexico in 1995.

This legislation sends a clear signal to our trading partners that the U.S. does not take seriously its multilateral trade obligations and undermines the recently announced initiative of the Clinton Administration to enforce existing trade agreements. It invites trading partners to renege on their trade commitments and to initiate copy cat actions that jeopardize the continued exports of competitive U.S. industries.

Enactment of H.R. 2795 jeopardizes continued U.S. meat exports to Mexico.
Indeed, Mexican pork producers repeatedly have called for the withdrawal of pork from NAFTA. As you know, Mexico would be within its rights under both NAFTA and the Uruguay Round Agreement to retaliate against U.S. meat if the Florida tomato industry obtained safeguard relief from the U.S. International Trade Commission.

Respectfully submitted,

Alan Tank, Chairman
MEAT INDUSTRY TRADE
POLICY COUNCIL

American Meat Institute
American Sheep Industry Association
National Cattlemen's Beef Association
National Pork Producers Council
U.S. Meat Export Federation

By permission of The Chairman

EMBAJADA DE MÉXICO

February 29, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Committee of Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Dear Mr. Chairman:

I am writing to express the concerns of the Government of Mexico regarding HR 2795, which we understand will be considered by the Subcommittee on Trade in the near future. This legislation, which is intended to help the Florida tomato industry restrict imports from Mexico, would have a much broader impact that could damage significantly the integrity of the NAFTA, and harm the interests of exporters in both of our countries.

As I am certain you are aware, under the current safeguards statute, as required by the WTO Safeguards Agreement and the GATT, an objective determination must be made that the imports are causing, or threatening to cause, serious injury to a domestic industry prior to the adoption of a safeguards measure. "Domestic industry" is defined as the "producers *as a whole* of the like or directly competitive products," or "those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products." In contrast, HR 2795 would allow a determination of injury to be made through an examination of the effect of imports on only a subset of the total domestic industry during a limited portion of the year.

HR 2795 would require the United States to depart from that internationally agree-upon standard. It would authorize injury to be determined based on the effect of imports on only a subset of the domestic industry during only a limited portion of the year. The U.S. International Trade Commission would be required to ignore the impact of imports on the production of the identical product in the United States, even by the same companies and in the same state, during other parts of the year. For

xample, Florida today is the dominant producer and supplier of fresh omatoes to the U.S. market during eight months of the year. The proposed egislation would require the International Trade Commission to ignore lorida production during most of those months and, instead, to focus only n Florida production during two or three months, when it faces competition om Mexico.

Enactment of HR 2795 would encourage domestic interests in the Inited States and other countries to define their industries in an artificially arrow manner, so that import restrictions can more easily be adopted. It is ot difficult to foresee that doing so could lead to absurd results, in which ealthy domestic industries can obtain protection from imports for limited eriods during the year, a result which could damage exporters in both our ountries and overall trading relationship. In a safeguards action, any nport relief must be applied to imports from all countries, and affected ountries are entitled to compensation or, in the absence of compensation, retaliate against the country adopting the safeguards measure. Thus, ore frequent application of safeguards action would result in more frequent nposition of protectionist measures, a situation that could only undermine e significant achievements our countries have accomplished in the NAFTA nd the WTO.

In that regard, I would like to voice another large concern. The Inited States has long been advocate for an open global trading system to romote economic development throughout the world. For the United tates to recede from those principles, and from the practices that have een firmly established under the GATT for 50 years, in order to protect omestic industries, can only make it more difficult for other countries to esist pressures for protection from their own industries.

On behalf of Mexico, I urge you to consider these issues carefully as ou review HR 2795.

Sincerely,

Jesús Silva-Herzog
Ambassador

Loretta Miller
1001 Nassau St Apt #3
Immokalee, Fl. 33934

2/28/96

Philip Mosely, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

Honorable Philip Moseley:

I work at Jack + Ann's Feed + Supply and have been in this business for 2 years years. Our business is directly dependent upon the Florida winter vegetable farms and their workers for our continued operation.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability the farmer has to continue in the winter vegetable business.

Mexico is dumping produce below their cost of production, thus driving farm prices down to as little as 50% of our production cost.

Without a seasonal definition of the winter vegetable industry, which is the only American production area for vegetables between November and May, the farmer cannot even apply to the International Trade Commission for relief. Without the winter vegetable farmer there will be millions of people out of jobs, and our entire state will be adversely affected.

I support H. R. 2795.

Sincerely,

Loretta Miller

(IDENTICAL LETTER RECEIVED FROM 44 OTHER INDIVIDUALS)

MIMS WELDING, INC.
Post Office Box 940
Immokalee FL 33934

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

Louis D. Mims

MOBLEY PLANT COMPANY
1265 GA HWY. 133 NORTH -:- MOULTRIE, GA 31768
912-985-5544 -:- 1-800-345-5783

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

We are a supplier of Vegetable transplants to the Florida winter vegetable industry. We have been in business 12 years. We have 75 to 100 employees.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. would allow us to apply to the International Trade Commission for relief. I support passage of H. R. 2795.

Sincerely,

National Alliance
For
Seasonal Agricultural Trade

NASAT Statement
Submitted to
The House Ways and Means Committee
March 1, 1996

Introduction

The National Alliance for Seasonal Agricultural Trade (NASAT) supports H.R. 2795, legislation that would permit an industry growing seasonal perishable crops successfully to seek assistance under Section 201 et seq. of the Trade Act of 1974, as amended, commonly known as the "escape clause" or "safeguard" legislation.

NASAT membership includes organizations that represent growers of seasonal perishable fruit and vegetable crops. These annual and perennial crops are grown mostly in the State of California.

Action against Unfair Foreign Competition and Injurious Imports

Where there is injury to a domestic industry due to increased levels of imports of a like or directly competitive product, safeguard action may be taken under Sections 201 et seq.. Relief includes the imposition of, or increase in tariffs, or increased quotas, and trade adjustment assistance. Relief which is not automatic is temporary, and the domestic industry must inform the U.S. International Trade Commission ("USITC"), why the petition is filed, and how it will make a positive adjustment to import competition.

Problem

Distinction Between One Crop and Seasonal Industry (Perishable) Crops

NASAT's concerns are directed to those seasonal crops that are perishable. To understand why NASAT members support H.R. 2795, it is necessary to understand the difference between industrial articles, agricultural crops, and seasonal perishable crops.

Under Section 201 et seq., there appears to be no distinction between the industrial article, "industry" agricultural crops and semi-perishable seasonal crops. However, the seasonal perishable crop cannot qualify for an adjustment remedy under the safeguard law.

Industrial Product

The door knob industry is a good example of an industrial article. It can be made any place in the United States every day of the year; in places that are cold or hot with little rainfall or abundant rainfall; in the winter or in the summer; in the State of Washington, Maine, or Texas. The determining factors for location of such an industry would probably be sufficient labor, proximity to transportation and proper zoning for the plant. Unlike agriculture, seasons of the year do not normally impact the production of the industrial article - the door knob.

One "Industry" Agricultural Crops

Examples of a one "industry" season semi-perishable crop would be corn, wheat, soybeans, oats, barley, etc.. These crops are mainly grown in the Midwest and depend on a certain environment, but they are one-season crops and can be stored for months and perhaps more than one year. USITC would consider the nation's crop collectively as the "industry", whether it is grown in Iowa or Georgia.

NASAT □ 1005 12th Street □ Suite A □ Sacramento, California 92714 □ (916) 446-1435

Annual Seasonal Perishable Crops

Annual seasonal perishable crops are fruits and vegetables that require planting each season. Annual crops such as radishes, peppers, tomatoes, potatoes, strawberries, etc., will normally be a one season crop, (some regions may have the advantage of obtaining two crops in a growing season, as lettuce in Salinas, California), and the crops will be harvested and sold during a period of the year. The time period from planting to harvest will range from two to five months depending on the crop.

As an example, in January, strawberries are grown in south Florida and certain parts of California. Strawberries, like other seasonal perishable crops, need a certain type of soil, temperature, adequate water, and daylight. After several months when the temperature changes, the crop is harvested, sold and consumed, and it will be another year before the strawberry is planted in the area. A second, different region will be producing the strawberry after the first area completes its production. (Most likely if the strawberry were planted in a second region at the same time, the crop would be a failure because the second area lacks the necessary environment). If the first crop area experiences import surge competition, the crop will not be planted in that area in the following years, but later harvested strawberry production in different regions would continue in the future because they were not impacted as a result of the import surge.

Perennial Seasonal Perishable Crops

Perennial crops are crops that once planted, produce for more than one season (year). Unlike annual crops, perennial seasonal perishable crops do not produce in commercial quantities for three or more years after being planted. Some crops have more than $10,000 per acre invested, not counting the land, before the crops start producing.

Perennial crops can be segmented into two types: perishable and semi-perishable. Examples of perishable perennial crops are asparagus, peaches, nectarines, grapes, mangos, papayas, cane berries, etc. Semi-perishable perennial crops include dates, chestnuts, citrus, apples -- crops that need refrigeration and can last months before being consumed.

Specific Differences in Annual and Perennial Crops

Seasonal perennial perishable crops are different from annual perishable crops because they are permanently planted on the same acreage and demand different considerations. Annual crops normally are rotated because of pest build-up in the soil.

A major difference between the annual and perennial crop is the time required before the perennial crop can be commercially harvested. For example, dates may require some ten years before they can be commercially harvested; pistachios, some six years; citrus, three to four years; and asparagus, five years. Once perennial crops begin producing they continue to produce for a number of years. For example, asparagus plants produce for fifteen years, whereas, an annual crop like peppers produces for only one year.

Another principal difference between the seasonal annual crop and the seasonal perennial crop is the inability to relocate the perennial crop, if the crop suffers from an import surge. First, it is horticulturally impossible to relocate the seasonal perennial crop that has tree, vine or bush roots for production in the following season. Secondly, some of the seasonal crop regions are quite small in area because of environmental limitations. Many of these areas have supported the perennial crops for decades and the plants are replaced every ten, fifteen and even thirty years. How do you relocate 15,000 acres of peach trees, or relocate hundreds of acres of asparagus or mangos? The

farmer cannot relocate his or her plants. Or, how do you replace the micro-climate - this is impossible. But a door knob factory can move its equipment to another region in the U.S. - or even to another nation to compete in the world market.

Serious Injury or Threat of Serious Injury to a Seasonal Perishable Industry

A seasonal perishable crop industry is frequently one that sells its crop in a few weeks to two months, before another region in the U.S. starts its marketing season for that crop. If there is an import surge during the production and harvesting of the first seasonal crop, by the time the other domestic seasonal crops enter the market, the imported crop and the first seasonal crop have been sold in the market. Consequently, the first crop suffers the injury and the second, third and following seasonal crops are not injured by the import surge. Yet, under the existing law, all the seasonal perishable "like" crops are required to be considered as one industry. The effect of the current law is that, under the above scenario, the first harvested seasonal crop is eventually forced out of business.

Need for Legislation

The law does not recognize the seasonality situation of growers of perishable fruits and vegetables. At the current time, seasonal growers are considered to be a part of a national industry that may produce and sell during the whole year, which may include entirely different times of the year from that of seasonal growers. If growers in one region produce and sell at a time when no other domestic growers are producing and selling, economic data of all the domestic regions are nonetheless considered in determining whether there is import injury to the one region.

Application of H.R. 2795 Legislation in the Safeguard Program

A more specific example of how the legislation would function is provided in the following scenario:

A seasonal "like" perishable crop, asparagus, is grown in five distinct locations in the States of California, Oregon and Washington. The crop is grown in these different regions because of the micro-climate and soil type that is required for growing the crop successfully and to continue the supply of fresh produce to the consumer. The asparagus is first harvested in January in southern California and harvest is completed in the State of Washington in late June. British Columbia continues to harvest into July. The crop has a shelf life of two to three weeks, and each separate growing area normally sells a substantial percent of its crop before the next, further north area starts selling its crop. An import surge of the crop creates an injury or threat of injury to the first-in-time harvest and sold crop.

The seasonal perishable crop, asparagus, for the first particular growing season would have standing to file a petition, if the crop demonstrates to the USITC all the existing safeguard requirements, plus if all of the production of the asparagus is sold during the growing season and the demand for asparagus in that season is not supplied, to any substantial degree, by producers of the article in a different growing region of the country and different season.

If the imported crop caused two seasonal perishable crops, not necessarily selling at the same time, to file the safeguard petition, then the two seasonal perishable industries would be required to provide the USITC with their economic data and perhaps have their cases merged into one case.

Scope of Relief

The proposed legislation would amend Section 201 et seq. to permit, for the first time, seasonal agricultural crops to receive the same opportunity that is provided other industries. The number of industries that would be eligible to seek relief under this legislation would be small, and the scope of relief would be extremely narrow. The legislation would not provide immediate relief, and any relief provided would not be permanent but temporary for a few years. In the last twenty one years, only one agricultural crop, canned mushrooms, was successful in receiving relief (adjustment assistance).[1]

The legislation would provide the opportunity for the seasonal perishable agricultural industry to have an opportunity to succeed with a safeguard case. If successful at the USITC level, the industry must still have its case approved by the President.

H.R. 2795 is Compatible with Article XIX of WTO

The Analytical Index[2] for the interpretation of Article XIX, Emergency Action on Imports of Particular Products, sets forth several conditions for the article to be fulfilled and these are:

> "(i) the product in question must be imported in increased quantities;
>
> "(ii) the increased imports must be the result of unforeseen developments and the effect of the tariff concession; and
>
> "(iii) the imports must enter in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products.

Applying the above principles to the problem of seasonal crops the petitioner must comply with the above conditions or the safeguard petition will fail before the USITC. H.R. 2795 merely permits the seasonal perishable crop that is grown during a particular growing season and sells all or most all of the production during that growing season to have a reasonable chance of succeeding before the USITC if it can comply with the safeguard principles described above in this section.

Other Considerations

Mirrored Legislation

Concern has been expressed that if the U.S. adopts this amendment other nations will implement the same program. NASAT has been concerned with trade barriers that prevent their fresh fruits and vegetables from entering foreign nations. An example of a safeguard type of program is the European Union reference price for fruits and vegetables. This permits the E.U. to increase tariffs on fruits and vegetables every year when the E.U.'s produce is being sold. Switzerland, during the very small Swiss asparagus production, can place a $5.00 per pound duty on California asparagus. Yet the Uruguay Round did not eliminate these practices.

These foreign programs do not have the agency proceedings required by the U.S. safeguard statute. If the E.U. and other foreign countries were to mirror the U.S. safeguard law, as amended with the proposed seasonal perishable legislation, NASAT would be elated. U.S procedures would be preferable to the current trade system used by many nations to discourage exports.

---

[1] U.S. ITC Inv. No. TA 201-43, Mushrooms

[2] GATT, Analytical Index: Guide to GATT Law and Practice, Updated 6th Edition (1995)

U.S. Fresh Fruit and Vegetable Protection in the NAFTA Agreement

Your Commi.tee has received correspondence claiming that the fresh fruit and vegetable industry received protection in the NAFTA through tariff rate quotas and long tariff phase out periods. This observation requires a response.

First, the exporting NAFTA producers received a huge trade benefit through the currency devaluation that took place in December 1994. To equate a five percent NAFTA tariff to a fifty percent currency devaluation is not a "level playing field".

Second, the opponents to the legislation assume that all fresh fruits and vegetables maintained a tariff. In contrast, numerous United States crops had no tariff or an extremely low tariff. One cannot claim that these crops had a reasonable time to adjust to the sudden currency devaluation.

It is important to recognize that NASAT is not supporting the legislation because of opposition to NAFTA. NASAT membership has for many years recognized the import surge problem and in fact supported the Committee's fast track perishable legislation in 1988 as a temporary remedy for import surges from any country.

Unfinished Business of the 100th Congress

In the 100th Congress, the House Committee on Ways and Means provided the needed relief for the seasonal perishable crops during debate on legislation (H.R. 3, the primary provisions of which became the Omnibus Trade and Competitiveness Act of 1988 (PL 100-418). Page 98 of the Committee report (House Report 100-576) includes the following paragraph:

> 5. Seasonal Products. The bill adds a special provision that, in cases involving imports of seasonal agricultural products, the ITC may find serious injury or threat thereof when the increased imports are largely entering during a specific period or season of the year and are largely impacting only those domestic producers harvesting or marketing during that season or period of year. (emphasis added). In applying this new provision, the ITC should continue to examine historical trends in imports and industry conditions, but should do so in the context of the seasonal nature of the product.

Clearly, the Committee intended to include those producers that sold a perishable crop during a period of the year when the other producers of the same crop were not harvesting and selling their like crop. Unfortunately, this provision was dropped in a House-Senate conference.

Conclusion

As earlier stated, the application of the proposed legislation would be narrow. In order for a perishable seasonal crop to receive relief from overwhelming foreign competition in the form of new or increased import duties, tariff rate quotas or other types of trade assistance, it would have to meet all the existing statutory criteria in addition to the following proposed legislative criteria:

- all or almost all of the production of the article is sold during the growing season; and,

- the demand for the article is not supplied, to any substantial degree, by producers of the article in a different growing season.

This requirement means that the seasonal perishable crop will be grown at a different time of the year than other domestic production areas, and that the crop will have to be substantially sold prior to the other grower season of the "like product".

Before the
Subcommittee on Trade
House Ways and Means Committee

STATEMENT OF THE NATIONAL PORK PRODUCERS COUNCIL IN OPPOSITION TO H.R. 2795, A BILL THAT WOULD CHANGE THE DEFINITION OF "DOMESTIC INDUSTRY" IN CERTAIN SAFEGUARD ACTIONS

INTRODUCTION

On January 31, 1996 the Committee on Ways and Means, Subcommittee on Trade, provided notice that it was seeking the views of interested parties on a number of miscellaneous trade proposals including H.R. 2795. The National Pork Producers Council hereby expresses its opposition to HR 2795, a bill which would permit the U.S International Trade Commission (ITC) to examine the impact of surging imports of perishable agricultural products on a seasonal basis.

The National Pork Producers Council is a national association representing pork producers in 45 affiliated states who annually generate approximately $11 billion in farm gate sales, $66 billion in economic activity and employ 764,000 Americans from the farm through processing. NPPC is a nonprofit corporation incorporated in the State of Iowa.

The United States is the lowest cost producer of pork in the world. Danish producers, which are the lowest cost producers in the European Union and the leading global competitors of U.S. producers, have production costs that, on average, are 50 percent higher than the costs of U.S. producers. The production costs of Canadian producers are 10-15 percent higher than the costs of their U.S. counterparts while Mexican production costs are 60 percent higher than U.S. costs.

U.S. produced pork is very high quality. While lean and increasingly low in fat, U.S. pork consistently is selected as the most flavorful pork when compared in blind taste tests with its foreign competition.

Pork is the world's meat of choice. Pork represents 44 percent of daily meat protein intake in the world. Beef is a distant second at 28 percent of daily global protein intake. U.S. pork producers were ardent proponents of NAFTA and the Uruguay Round Agreement. The industry strongly supports further trade liberalization measures. These trade agreements permit U.S. pork producers to exploit their comparative advantage in international markets.

H.R. 2795 CONTRAVENES U.S. MULTILATERAL TRADE COMMITMENTS

Current U.S. law, which is based on Article XIX of the GATT, defines the term "domestic industry" as:

> the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article.

19 U.S.C. 2252 (c)(6)(A)(i). H.R. 2795 would change the definition of domestic industry in section 202 of the Trade Act of 1974, 19 U.S.C. 2252, to require the U.S. International Trade Commission ("ITC") to examine perishable agricultural products on a seasonal basis. This change would violate U.S. multilateral trade commitments because GATT Article XIX, as amended by the 1994 Agreement on Safeguards, does not provide a seasonal industry exception.

While the proposed legislation covers perishable agricultural products generally, there is no question that the Florida winter tomato industry will benefit in particular. Under current law, which is consistent with U.S. multilateral commitments, the ITC must assess the impact of Mexican tomatoes on the entire U.S. tomato industry. Indeed, the ITC recently analyzed this issue under current U.S. law finding that imports of tomatoes from Mexico do not injure the U.S. tomato industry. See Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. 2881 (April 1995). Under the proposed legislation, the ITC, when examining imports of tomatoes from Mexico, would examine the impact of such imports only on the approximately 80 growers that comprise the Florida winter tomato industry. The likelihood of an affirmative ITC injury determination in any forthcoming tomato case would be enhanced significantly by enactment of this legislation.

Not surprising, 16 nations already have objected to this proposed legislation in the World Trade Organization. This legislation sends a clear signal to our trading partners that the U.S. does not take seriously its multilateral trade obligations and undermines the recently announced initiative of the Clinton Administration to enforce existing trade agreements. It invites trading partners to renege on their trade commitments and to initiate copycat actions that jeopardize the continued exports of competitive U.S. industries such as the U.S. pork industry.

U.S. PORK EXPORTS TO MEXICO ARE IMPERILED BY H.R. 2795

As a result of NAFTA, U.S. pork exports to Mexico increased by 74 percent in 1994 compared to 1993 levels. Even with the devaluation of the peso, U.S. exports to Mexico remain higher than pre-NAFTA levels. Moreover, the U.S. pork industry will gain further market share in Mexico as the NAFTA phase-in period proceeds. During 1995, Mexico was the third largest export market for the U.S. pork industry.

Enactment of H.R. 2795 jeopardizes continued U.S. pork exports to Mexico. Mexican pork producers are upset that U.S. pork has increased its share of the Mexican market to 30 percent. Indeed, Mexican pork producers repeatedly have called for the withdraw of pork from NAFTA. See e.g. CNN Headline News, 8:00-8:30 AM, January 17, 1996 (Transcript available through Video Monitoring Services of America). NPPC informally has been told that Mexico will retaliate against U.S. pork exports if action is taken in the United States against Mexican tomatoes. Swine and pork products account for one-third of the import categories covered by Mexican tariff rate quotas.

Mexico would be within its rights under both NAFTA and the Uruguay Round Agreement to retaliate against U.S. pork. If the Florida tomato industry obtained safeguard relief from the ITC, the United States would have to compensate Mexico by making "concessions having substantially equivalent trade effects." If the U.S. and Mexico do not agree on appropriate compensation, then Mexico can unilaterally suspend "equivalent" benefits owed the United States. Thus, the United States and the U.S. pork industry would have no legal recourse to Mexican retaliation on U.S. pork.

CONCLUSION

NPPC appreciates the difficulties being experienced by the Florida tomato industry. However, H.R. 2795 is not an appropriate mechanism for addressing the problems of the Florida tomato industry. This legislation sends a clear signal to our trading partners that the U.S. does not take seriously its multilateral trade obligations and undermines the recently announced initiative of the Clinton Administration to enforce existing trade agreements. Enactment of this legislation clearly will result in Mexican retaliation against the U.S. pork industry. Consequently, NPPC vociferously opposes this proposed legislation.

National Watermelon Association

PUBLIC AFFAIRS OFFICE

Telephone (703) 683-6786
Fax (703) 683-6788

2121 Eisenhower Avenue, Suite 200
Alexandria, Virginia 22314-4866

February 29, 1996

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Moseley:

On behalf of the National Watermelon Association whom I serve as Director of Public Affairs, allow me to inform you that the Association passed the following resolution during a general session at its 82nd annual meeting in Nashville, Tennessee, on February 23, 1996:

> The Shaw/Canady Bill (H.R. 2795) allows the "domestic industry" definition Section 202 of the Trade Act of 1974 to include domestic producers of perishable agricultural products who produce the products during a distinct growing season. H.R. 2795 requires producers petitioning for relief under this definition to demonstrate that no other domestic producers are supplying the need and that all of the produce is marketed during the growing season.
>
> Therefore, the National Watermelon Association urges the House of Representatives to enact H.R. 2795, a bill that is compatible with S. 1463 that has already passed the Senate, so that the critical factor of seasonality can be included in the determination of injury or harm resulting from import surges affecting a domestic industry.

Sincerely,

Vern F. Highley
Director of Public Affairs
National Watermelon Association

By permission of The Chairman

NEW ZEALAND EMBASSY
37 OBSERVATORY CIRCLE, NW,
WASHINGTON, D.C. 20008

Phone: (202) 328-4800
Fax: (202) 667-5227

28 February 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
US House of Representatives
1102 Longworth House Office Building
WASHINGTON DC 20515

Dear Mr Moseley

I am writing to set out New Zealand's serious concerns at the legislation designed to amend the safeguards provisions of the Trade Act 1974 (H.R.2795 and S.1463). These amendments seek to extend the definition of "domestic industry" and "like products" for perishable agricultural products.

In 1995 the International Trade Commission rejected arguments from Florida growers that they were entitled to relief from safeguard action, because they only account for a small proportion of overall United States production.

This finding is consistent with the intent of the WTO Safeguards Agreement, which requires that to be determined as the "domestic industry", Florida growers would have to produce "a major proportion of the total domestic production" (Article 4.1c).

The proposed amendment seeks to get around the findings of the International Trade Commission. As such, it will bring the United States into conflict with its obligations under the WTO Safeguards Agreement.

If the United States does establish a "seasonal safeguard" as a result of this amendment to the Trade Act 1974, it will impact on the interests of the suppliers of perishable agricultural products, like New Zealand.

The amendment will undoubtedly benefit the interests of a small number of growers in one state. But it is by no means a costless exercise for the United States.

The definitions of "domestic industry" and "like product" contained in the WTO Safeguards Agreement provide a fundamental protection against inappropriate trade remedy action. The provisions of this Agreement have served well the interests of United States agricultural producers in the past.

The United States will be aware that its trade policy actions have a substantial demonstration effect. Other counties which by virtue of size or geography may be in a similar position to the United States, like the EU or Japan, may well follow the example of instituting a "seasonal safeguard".

As a significant exporter of perishable agricultural products, particularly in the citrus sector, the United States has a clear interest in ensuring that the principles in the WTO Safeguards Agreement are not undermined.

Moreover, other countries may not simply confine seasonal safeguard action to perishable agricultural products, but could extend a revised definition to all agricultural products. This could widen any impact to other important United States export interests, such as the grains sector or meat producers.

As a final point, we would note that in response to safeguards action, exporting countries are entitled to take measures to compensate for the adverse effects on their trade. Again this would serve to impact negatively on the interests of sectors other than those benefiting from the safeguards action.

New Zealand therefore submits that in the interests of upholding fundamental WTO principles, and of avoiding a demonstration effect to other significant importers of agricultural products, the United States should retain its existing definition of "domestic industry" and "like product".

Yours sincerely

L J Wood
Ambassador

JOINT COMMENT ON BEHALF OF THE GOVERNMENTS OF NICARAGUA, HONDURAS, EL SALVADOR AND GUATEMALA

March 1, 1996

The Hon. Philip Crane, Chairman
Subcommittee on Trade
House Ways and Means Committee
1104 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

We are writing on behalf of the Governments of Nicaragua, Honduras, El Salvador and Guatemala to express our concerns over recent proposals (as enshrined in HR 2795, as introduced by Congressman Shaw, and S. 1463, which passed the Senate on January 26) that will alter the definitions of "domestic industry" for agricultural safeguard purposes to isolate seasonal production.

These legislative initiatives appear to contradict the United States of America's international obligations under several international trade agreements, such is the case concerning provisions under the North American Free Trade Agreement (NAFTA), and the Agreement on Safeguards in the Final Act of the Uruguay Round Agreement on the General Agreements on Tariffs and Trade. Disaggregaring domestic industries along seasonal lines would appear to violate the spirit, if not the letter, of these agreements.

Moreover, such an initiative sends the wrong signal regarding the promotion of liberalized trading regimes, both in the context of the WTO and in the context of the FTAA process, of which the NAFTA is an important element.

At the very least, efforts to unilaterally restrict access to the United States tomato market seem inconsistent with parallel efforts by the United States to open markets in other countries that are important trade partners in the agricultural sector.

While our governments understand the importance of maintaining viable domestic production against import surges, we also recognize that the discipline of trade liberalization requires the maintenance of open markets with predictable rules.

We are heartened to note that United States-Central American agricultural trade has steadily increased over the past few years. During 1994, for example, total United States agricultural exports to Central America exceeded $758 million, representing an increase of roughly 65 percent from the level five years earlier.

Similarly, the United States has become an increasingly important market for Central American agricultural products. From 1990 to 1995, US imports of Central American agricultural goods grew by 20 percent. These impressive trends, which will benefit both the farmers and consumers in the United States, in Central America, and throughout the world can only continue if together we advance, and abide by, a clear and consistent path of trade liberalization in agriculture.

We appreciate the opportunity to register these views. Please accept the assurances of our highest consideration.

Sincerely,

Roberto Mayorga-Cortes
Ambassador of Nicaragua

Roberto Flores Bermudez
Ambassador of Honduras

Orlando Guzman
Charge d'Affaires
El Salvador

Alfonso Quiñonez
Charge d'Affaires
Guatemala

North American Export Grain Association Incorporated

February 26, 1996

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515-6348

Subject: H.R. 2795

Dear Mr. Moseley:

The North American Export Grain Association (NAEGA) is a not-for-profit association of privately and publicly owned companies and cooperatives engaged in the export of grains and oilseeds from the United States. Its purpose is to promote and sustain the development of export grain trade from the United States. Chartered in 1912 and incorporated in 1920, NAEGA has served the interests of the American export grain industry for more than 80 years.

NAEGA is opposed to H.R. 2795. To redefine "domestic industry" as "seasonal industry" when determining eligibility for increased import barriers is a blatant attempt to change previously agreed-upon definitions and rules under which trade is conducted. Passage of this legislation would certainly encourage other countries to employ the "seasonality" factor to restrict U.S. imports. We would be particularly vulnerable on exports of grains to Mexico.

The U.S. has been particularly vocal in its criticism of trading partners that do not "play by the rules." H.R. 2795 would be an instance where our high-sounding rhetoric would prove hollow.

Sincerely,

Daniel G. Amstutz
President/CEO

DGA:cs

1300 L Street, N.W., Suite 900 • Washington, D.C. 20005 • (202) 682-4030 Telefax: (202) 682-4033

JOE ORTIZ
440 S. W. 4th Avenue
Boynton Beach, Florida 33435

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

My family and I depend upon our jobs in farming. Mexico's dumping has placed our livlihoods in danger.

I SUPPORT H.R. 2795.

Very truly yours,

JOE ORTIZ

JO:pm

PACIFIC BROKERAGE Co.

P.O. BOX 1269 NOGALES, ARIZONA 85621 • APARTADO NO. 3 NOGALES, SON., MEX • TELEX 663-17

• J.F. MANSON CUSTOMS BROKER

February 22, 1996

Philip D. Mosey
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosey:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 23 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1--yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Very truly yours,

PACIFIC BROKERAGE CO.

By:
James F. Manson

JFM'gmm

SELECT QUALITY PRODUCE
Growers - Shippers
Importers - Exporters

February 27, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington DC 20515

Re: H.R. 2795

Dear Mr. Moseley:

Pandol Bros., Inc. is a California based grower, shipper, importer and exporter of fruits and vegetables, incorporated in 1957. Approximately 60% of our gross sales are either imported or exported and generates the job opportunities for a proportional amount of our 2.5 million dollar payroll. Mr. Jack V. Pandol has been appointed by Presidents Reagan, Bush and Clinton to serve continuously on the USDA Agricultural Trade Advisory Committee since 1986. Pandol Bros. maintains trading relationships with about 30 countries.

It is with great concern that I am writing to you about legislation that is currently pending before your committee that would redefine "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers. We believe that this measure is contrary to the spirit and, perhaps, the letter of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) accord.

Moreover, much like the U.S. Trade Representative's proposal to change the tariff rate quota for imports of Mexican tomatoes, this legislation would set a disturbing trade policy precedent and may ultimately harm U.S. exports.

Specifically, this legislation would encourage other U.S. trading partners to adopt similar measures to shield their commodities from U.S. competition. As the world's largest agricultural exporter, we clearly have the most to lose. Our trade policy should be based on the overall interests of all commodities -- not just one.

We urge your committee to examine this bill carefully before it takes action. If it does, we are confident that you will agree that the United States should not risk such a protectionist initiative.

Sincerely,

John Pandol
jm
cc: Relevant Members of Congress

Route 2, Box 388 · Delano, California 93215 · (805) 725-3755 · TELEX 499-3059 ITT · FAX (805) 725-4741

INTRU, INC.
D-B-A **PRODUCERS FERTILIZER COMPANY**
Manufacturers of PRODUCERS Quality Brands plus USA Liquids
2804 Hanson Street
Fort Myers, Florida 33916
Telephone (813) 334-2375 800-652-4769 FAX (813) 334-4656

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House of Office Bldg.
Washington, DC 20516

Dear Mr. Moseley:

Producers Fertilizer Company supplies fertilizer and chemicals to growers of Florida winter vegetables. We have been in business for 30 years and currently have 35 employees.

This year Mexico has been dumping winter vegetables on the market in huge amounts. This is due to the passage of NAFTA and the devaluation of the peso. Their actions are destroying the Florida winter vegetable industry and our business.

H.R. 2795 would allow us to apply to the International Trade Commission for relief. I support passage of H.R. 2795.

Yours truly,

Robert Pease
President

RP/slw

cc: Porter Goss

Silvia Pugliese
5330 Royal Palm Beach Blvd.
Royal Palm Beach, Florida 33411

February 29,1996

Philip Mosley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

I am a employee for a Florida winter vegetable farmer. Their business has been in existence for 45 years. It is a family business. They have 300 employees.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, they cannot even apply to the International Trade Commission for relief.

I support H.R. 2795

Sincerely,

Silvia Pugliese

R. V. Distributing
P.O.Box 1728
Nogales, Arizona 85628 -1728

February 22, 1996

Reference H.R.2795

Phillip D. Mosley
Chief of Staff
Committee on Ways and Means
U. S. house of Representatives
1102 Longworth House Office Building
Washington , DC 20515

Dear Mr. Mosley .

I am writing to you to express my concerns as a U. S. businessman about H.R. 2795. My livelihood and that of my 6 employees depend on the import and export
of products between the United States and Mexico. I fear that H. R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA . I , as a U. S. entrepreneur , will be taken to court and lose my reputation as as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1 yet the Florida growers wish to set April 30 as the end of the " import season " -- then , under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Ray Valencia

FEBRUARY 22 1996

REFERENCE : H.R. 2795

Phillip D. Mosley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington , DC 20515

Dear Mr. Mosely :

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 21 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons :

> I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I , as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.
>
> The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1- yet the Florida growers wish to set April 30 as the end of the "import season"--then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Hector Sanchez

POST OFFICE BOX 1178 • NOGALES, ARIZONA 85628-1178 • TELEPHONE (520) 281-9014

WESLEY B. ROAN
3571 31st Ave. S.W.
Naples, Florida 33964
(941) 353-7010

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

RE: Bill H.R. #2795

Dear Sir:

I am an employee of a Florida vegetable farming company. I have been involved in this production industry for 16 years, following completion of my B.S. degree from the University of Florida College of Agriculture.

The unprecedented increase in exports of foreign grown produce into this country, has caused the loss of many jobs, closed company doors and may eliminate my career and life's work, if promised protections for the Florida Agriculture industry, related to NAFTA, do not come into play.

Please give the Florida industry and many individuals like myself, hope for a future by passing House Bill #2795 as soon as possible.

Sincerely,

Wesley B. Roan

WBR:lmd

Royal's
EXECUTIVE OFFICE
324 S. W. 16TH STREET
BELLE GLADE, FLORIDA 33430

TELEPHONE (407) 996-6581

PHILIP MOSELY, CHIEF OF STAFF
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
RE: H.R. 2795

HONORABLE PHILIP MOSELY:

OUR COMPANY OWNS SEVERAL RETAIL BUSINESSES FROM FURNITURE, FAST FOOD TO SHOPPING CENTERS. WE ARE DIRECTLY DEPENDENT UPON FLORIDA WINTER VEGETABLE FARM WORKERS FOR OUR CONTINUED BUSINESS OPERATION. WE HAVE BEEN IN THE BUSINESS SINCE 1929 AND EMPLOY WELL OVER 1,000 PEOPLE.

THE DRAMATIC INCREASE IN WINTER VEGETABLES BEING SHIPPED INTO THIS COUNTRY OVER THE PAST TWO GROWING SSEASONS HAS DESTROYED THE ABILITY THE FARMER HAS TO CONTINUE IN THE WINTER VEGETABLE BUSINESS.

MEXICO IS DUMPING PRODUCE BELOW THEIR COST OF PRODUCTION. THIS DRIVES FARM PRICES DOWN TO AS LITTLE AS 50% OF OUR PRODUCTION COST.

WITHOUT A SEASONAL DEFINITION OF OUR INDUSTRY, WHICH IS THE ONLY AMERICAN PRODUCTION AREA FOR VEGETABLES BETWEEN NOVEMBER AND MAY, THE FARMER CANNOT EVEN APPLY TO THE INTERNATIONAL TRADE COMMISSION FOR RELIEF. WITHOUT THE WINTER VEGETABLE FARMER THERE WILL BE MILLIONS OF PEOPLE OUT OF JOBS, AND OUR ENTIRE STATE WILL BE ADVERSELY AFFECTED, NOT JUST THE FARMER.
I SUPPORT H.R. 2795

SINCERELY,

HARRY W. PARRISH
DIRECTOR OF OPERATIONS

February 29, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

RE: H.R. 2795

Dear Mr. Moseley:

Sales King and Melon King is a California firm that employees 300 people engaged in the growing, shipping and distribution of tomatoes and other fresh vegetables. We have been in this business for 17 years. For us, the North American market is an increasingly integrated one. We therefore oppose measures such as H.R. 2795 which are intended to restrict business opportunities in the North American market. It makes no economic sense to allow for the arbitrary creation of so called "seasonal industries" at a time when our nations best interest are in the "globalization" of markets.

Moreover, much like the U.S. Trade Representative's proposal to change the tariff rate quota for import of Mexican tomatoes, this legislation would set a disturbing trade policy precedent that may ultimately harm U.S. exports.

Specifically, this legislation would encourage other U.S. trading partners to adopt similar measures to shield their commodities from U.S. competition. As the world's largest agricultural exporter, we clearly have the most to lose. Our trade policy should be based on the overall interests of all commodities – not just one.

We urge your committee to examine this bill carefully before it takes action. If it does, we are confident that you will agree that the United States should not risk such protectionism initiative.

Sincerely,

Kelly T. Larey

Kelly T. Larey
President

cc: Relevant Members of Congress

573 E. LOCUST, SUITE 302 • FRESNO, CALIFORNIA 93720 • (209) 432-8400 or (209) 432-8424

SIX L'S PACKING COMPANY, INC.
P.O. BOX 2809
IMMOKALEE, FLORIDA 33934
(941) 657-4421

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515
RE: Bill H.R. #2795

Dear Sir:

Farm Op, Inc. is a Florida Winter vegetable producer. Our family business has been growing vegetables in Florida for 40 years. We employ approximately 1000 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Bill Lipman
CEO

BL:lmd

Stewart, Stephan & Bowen, Inc.
REAL ESTATE APPRAISAL & ANALYSIS

WILLIAM E. STEWART, JR. MAI
BRUCE A. STEPHAN MAI
CLIFFORD M. BOWEN, JR. SRA

February 29, 1996

Mr. Philip Moseley
Chief of Staff
Committee on Ways & Means
US HOUSE OF REPRESENTATIVES
1102 Longworth House Office Building
Washington, D.C. 20515

RE: HR2795

Dear Mr. Moseley:

I am a real estate appraiser servicing the agricultural industry and particularly the Florida winter vegetable industry. I have been in business for 20 years. The implementation of the NAFTA trade agreements and the subsequent devaluation of the Mexican peso created a situation in which Mexican vegetables were shipped into the United States in incredible volume and often dumped at below the cost of production. While I understand that this allows the Mexican growers to receive dollars rather than a devalued peso for their product, it is having a devastating affect on the Florida winter vegetable industry and it also affects my business. Through my business I am able to see first hand how this situation is undermining the millions of dollars that the winter vegetable industry has invested in their land and equipment.

HR 2795 would make it possible to apply to the International Trade Commission for relief. I whole-heartedly support passage of HR 2795.

A concerned taxpayer.

Clifford M. Bowen, Jr., SRA

CMB/dn

1919 Courtney Drive • Suite 9 • Fort Myers, Florida 33901 • 941/936-4041 • FAX 941/ 936-3141

Stewart, Stephan & Bowen, Inc.
REAL ESTATE APPRAISAL & ANALYSIS

WILLIAM E. STEWART, JR.
MAI
BRUCE A. STEPHAN
MAI
CLIFFORD M. BOWEN, JR.
SRA

February 29, 1996

Mr. Philip Moseley
Chief of Staff
Committee on Ways & Means
US HOUSE OF REPRESENTATIVES
1102 Longworth House Office Building
Washington, D.C. 20515

RE: HR2795

Dear Mr. Moseley:

I am Mr. Bowen's secretary and I also support HR 2795 since I have been a Florida resident for 17 years. Also, if my work slows down and I have to find another job, it will be a direct result of this Mexican situation and NAFTA. I cannot afford to be without a job.

Another concerned taxpayer.

Diane Newingham

1919 Courtney Drive • Suite 9 • Fort Myers, Florida 33901 • 941/936-4041 • FAX 941/ 936-3141

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL
1111 EAST 60TH STREET
CHICAGO, ILLINOIS 60637

Alan O. Sykes
Professor of Law

Direct Dial: (312) 702-9573
Fax: (312) 702-0730
Email: alan_sykes@law.uchicago.edu

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

I have been asked by the Fresh Produce Association of the Americas to consider whether two bills now pending in Congress, S. 1463 and H.R. 2795, which would allow the International Trade Commission to define a "seasonal industry" in cases under Section 201 of the Trade Act of 1974, are consistent with the obligations of the United States under the Agreement Establishing the World Trade Organization. For the reasons given below, it is my opinion that the WTO Agreement on Safeguards does not permit WTO members to impose safeguards measures for the protection of "seasonal industries," unless serious injury to such an industry also suffices to establish serious injury to the domestic industry as a whole.

Section 201 (et. seq.) of the Trade Act of 1974 and its predecessors were enacted to implement U.S. rights and responsibilities under Article XIX of the General Agreement on Tariffs and Trade, now incorporated into the Agreement Establishing the World Trade Organization as part of GATT 1994. Article XIX permits WTO members to impose temporary protective measures that would otherwise violate WTO obligations (usually the Article II tariff bindings or the Article XI prohibition on quantitative restrictions) only if a "product is being imported into the territory [of a member] in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products." Article XIX(1)(a). Protective measures imposed pursuant to Article XIX have come to be known as "safeguards measures."

To clarify and strengthen the obligations of Article XIX, GATT signatories negotiated the "Agreement on Safeguards" during the Uruguay Round. Article 2(1) of the new Agreement repeats much of the above-quoted language from Article XIX, while Article 4 elaborates its meaning. Of particular relevance here, Article 4(1)(c) provides that:

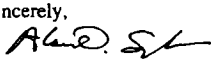
> "in determining injury or threat thereof, a 'domestic industry' shall be understood to mean the producers *as a whole* of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a *major proportion* of the total domestic production of those products." (emphasis added)

The proposal to amend U.S. law to allow injury to a "seasonal industry" to suffice for the imposition of safeguards measures is plainly at odds with this language. To be sure, it is conceivable that production over the "season" by the members of a "seasonal industry" would be so great as to constitute the "major proportion" of all domestic production. Under these circumstances, injury to such a seasonal industry would appear to meet the requirements of Article 4(1)(c). But where the production of the "seasonal industry" is not so great as to represent the bulk of all domestic production, as might often be the case, the "seasonal industry" might be suffering serious injury, yet the industry defined in accordance with requirements of Article 4(1)(c) might not be. Accordingly, an affirmative injury determination on the basis of a "seasonal industry" could well be found to be inconsistent with the requirements of the Safeguards Agreement.

It is no answer, in my opinion, to suggest that the Agreement leaves open the question of how to define the window of time over which domestic production is to be measured. If members are permitted to define an industry as those firms which produce the major proportion of output during the Winter, or in January, or on Tuesdays, the opportunities for abuse are virtually limitless. Artful delimitation of the time period for measuring domestic production, if permitted, would in many cases enable members to impose safeguards protection for the benefit of particular producers who have difficulty competing with imports, even though domestic producers as a whole were thriving. The use of safeguards measures for such a purpose could not be reconciled with the essential purpose of such measures, namely, to facilitate structural adjustment in declining industries (See the Preamble to the Agreement on Safeguards).

For these reasons, it is my judgment that an affirmative escape clause determination on the basis of injury to a "seasonal industry" could be challenged before the WTO with a considerable probability of success.

Sincerely,



Alan O. Sykes
Professor of Law

TA DE
DISTRIBUTING
COMPANY INC

Feb. 23, 1996

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my twenty employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1.- I believe in the sanctity of agreements and contracts. The provisions relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2.- The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1, yet the Florida growers wish to set April 30 as the end of the "import season then, under this proposed law, the individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

Robert L. Bennen

P O BOX 1486 NOGALES ARIZONA 85628 (602) 281-1932 FAX (602) 281-4087

ALONZO TAYLOR
P. O. Box 520
Felda, Florida 33930

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1101 Longworth House Office Building
Washington, D. C. 20515

Re: **H. R. 2795**

Dear Mr. Moseley:

My family has been in agriculture in the State of Florida for thirty (30) years. Over those years, we have encountered natural disasters, marketing surges, etc. However, it becomes apparent that the present Mexican posture of dumping produce at below our production costs appears to be the coup de grace.

It would appear that should you fail to recognize our plight and balance the scales, that we shall no longer be farming produce. I strongly urge your support on H.R. 2795.

I SUPPORT H.R. 2795.

Very truly yours,

Alonzo Taylor

ALONZO TAYLOR

TEXAS CITRUS MUTUAL
901 BUSINESS PARK DRIVE, SUITE 400
MISSION, TEXAS 78572
TEL: (210) 584-1772 • FAX: (210) 584-3307

RAY PREWETT
Executive Vice President

February 29, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

On behalf of the Texas citrus growers, we would like to go on record in support of HR 2795 which would amend Section 201 of the Tariff Act of 1930.

We believe this proposed legislation is consistent with NAFTA and the WTO, but that such legislation is necessary to provide a potential remedy for the seasonal domestic produce industry in the event we are unduly impacted by a surge in imports. The main thrust of the legislation is to provide a legal framework for a workable definition of a seasonal agricultural industry, like grapefruit. Under the present language in Section 201, the impact of imported "grapefruit" would be evaluated in relation to the twelve month production of all U.S. grapefruit, including California. Such a broad definition of grapefruit would not be appropriate or useful in measuring the impact of grapefruit imports on Texas grapefruit. Texas and Florida have similar growing seasons, but not California, and therefore, the definition of seasonal grapefruit in the U.S. should allow Texas and Florida grapefruit to be separated from California.

Again, we want to stress that we do not perceive HR 2795 as anti-NAFTA. On the contrary, it provides a realistic way of using the provisions in NAFTA to provide potential temporary relief to seasonal produce industries in the U.S.

Thank you for your consideration of these comments in support of HR 2795.

Sincerely,

Ray Prewett
Executive Vice President

RLP/bbs

JOINT COMMENT OF:
THE TEXAS DEPARTMENT OF AGRICULTURE, OHIO DEPARTMENT OF AGRICULTURE, MICHIGAN DEPARTMENT OF AGRICULTURE, ILLINOIS DEPARTMENT OF AGRICULTURE, OREGON DEPARTMENT OF AGRICULTURE, MINNESOTA DEPARTMENT OF AGRICULTURE (H.R. 2795)

February 28, 1996

The Honorable Bill Archer, Chairman
Ways and Means Committee
U.S. House of Representatives
1102 Longworth HOB
Washington, D.C. 20515

Dear Chairman Archer:

As leaders of agriculture in the states we represent, we would like to express our opposition to S.1462 and S.1463, and companions H.R. 2921 and H.R. 2795, respectively. If enacted, these bills could significantly reduce the gains the agriculture sector has made in the international marketplace. We believe the gains we have made in the last few years are just the tip of the iceberg for U.S. agriculture.

Just last year, U.S. agricultural exports totaled $54.1 billion. The projection for 1996 is a whopping $60 billion. These gains are due in part to the enactment of the North America Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), despite the economic crisis in Mexico. Because our states' commitment to free trade is solidly for the long-term, we are concerned with the potential consequences these bills would have on our industry's profitability.

S. 1462/H.R. 2921 would provide protection for Florida tomato growers from competition. During both trade agreements' negotiations, legal protection was agreed to in the form of tariff-rate quotas (TRQs) and lengthy phase-out periods. The Florida tomato industry has a 10-year phase-out period for its TRQ. S.1462/H.R.2921 would provide additional protection by requiring Mexican growers to pack their variety of tomato in the same manner that the Florida industry packs their tomatoes, while not regulating other varieties grown in the U.S. By erecting national standards for imported foreign produce while not requiring all domestic produce to follow suit, these bills create a non-tariff barrier and fall short of meeting "national treatment" standards under the NAFTA and GATT. Daily, we work to remove similar barriers and fight national treatment violations to improve opportunities for U.S. agricultural exports. A change like this would affect our nation's ability to fight for export opportunities.

Secondly, the Congress has authorized marketing order quality standards that both domestic and foreign produce must meet, regardless of how they are packaged. These standards protect U.S. consumers from sub-quality produce and are industry-initiated. Without the changes to national packing standards, U.S. consumers will still receive quality produce.

S.1463 and H.R.2795 are perhaps even more egregious than the former bills. These two bills would provide protection for the Florida tomato industry by changing the definition of an "industry." The "seasonal industry" definition would provide additional protections over and above those negotiated under the NAFTA and GATT. These two trade agreements were originally negotiated with specific windows of time to address seasonality concerns about competitive imports by applying additional tariffs during sensitive production periods. S.1463 and H.R.2795 would create a precedent from foreign competition. It would undermine everything we have worked for during the last 10 years to open world markets.

Changes like these go against everything our trade negotiators agreed to under the NAFTA and GATT. They also jeopardize our standing as the leader of the free market. We urge you to evaluate the impact that reduced foreign trade would have on the agriculture industry. The answer is clearly one that we cannot afford, especially when federal policy is directing U.S. agriculture producers to be more responsive to the marketplace.

We would like to submit these comments for the committee's record when hearings are held, and urge you to join us in opposing this legislation.

Sincerely,

Rick Perry
Texas

Fred L Dalley
Ohio

Barbara Cubin
Wyoming

Becky Doyle, Illinois

Bruce Cohen, Oregon

Gene Hugoson, Minnesota

Thomas Produce Company
Growers and Shippers of Quality Vegetables
9905 CLINT MOORE ROAD
BOCA RATON, FLORIDA 33496
(407) 482-1111

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20516

Dear Mr. Mosley:

The Thomas family has been in the business of farming in Florida for nearly 50 years, but a recent surge of winter vegetables imported from Mexico on the U.S. market has put our future in serious jeopardy.

Initially after NAFTA we noticed the dramatic import surges of Mexican tomatoes. These tomatoes have been and are continuing to be dumped on the U.S. market at less than the cost to produce them, driving down tomato prices to the point at which Florida growers cannot afford to harvest their crops. Furthermore, the U.S. consumer is not reaping any benefit from these cheap prices. Last year when these Mexican tomatoes were saturating our market, we could only get $3.00 for a 25lb. box of Florida grown tomatoes, while major area grocery chains were charging $.99 to $1.09 a lb.- a profit of over $22.00 a box!

U.S. growers have to abide by the most stringent pesticide and labor laws in the world. Thomas Produce has hired experts in our pesticide and labor divisions so we can operate in total compliance with the laws of our U.S. government. To add to our problems the administration is now advocating a $.90 an hour increase in our minimum wage. In comparison, Mexico has virtually nonexistent labor and pesticide restrictions and what they do have is haphazardly enforced.

This year Mexican shipments of eggplant are up 85% from October 1st to November 29th compared to 1994. Cucumbers are up 106%, squash are up 125% and peppers are up 212%.

We are one of the largest growers and shippers of produce in Florida, but if these surges continue from Mexico, we are going to have to shut down our entire operation which employs up to 1,000 people.

I would like to know what happened to NAFTA's "snap-back provision" to eliminate the overabundance of a particular product and protect U.S. growers.

We are honest, hard working taxpayers who feel our government has turned its back on us.

Why has the U.S. put itself in a position to rely on foreign-grown produce for the future? Theoretically, free trade is a positive ideal, but only when orchestrated on a level playing field. Only through the strongest effort by appointed officials such as yourself, will the Florida vegetable farmer be able to survive. Please help us keep agriculture viable in the State of Florida.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, we cannot even apply to the International Trade Commission for relief.

Everybody at Thomas Produce Company supports the passage of H.R. 2795.

Sincerely,

John J. Thomas, Sr.

John J. Thomas, Sr.
President

Trans-Tech-Ag, Corp.
International Agricultural Consultants
P.O. Box 5947
Fort Lauderdale, FL 33310-5947
(305) 772-1771 • Fax: (305) 772-1679

February 26, 1996

Phillip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg
Washington, D. C. 20515

RE: H.R. 2795

COMMENTS

My name is J. Luis Rodriguez, I represent the Florida Farmers and Suppliers Coalition, a grassroots group of farmers and suppliers in Florida. I am writing in support of H.R. 2795.

Imports of Mexican vegetables are up dramatically compared to last year. Mexican growers have increased shipments of all major crops produced by Florida during the winter months. Early in November, some commodities were up as high as 600% over the same period last year. This presents a serious problem for Florida Farmers.

Florida growers have seen a dramatic decline in prices received for their crops. Many producers have not been able to recover cost of production for their crops. Bankers and suppliers are predicting that 35% of Florida's winter vegetable growers will not be able to stay in business after this season (1995-1996). Since 1964 Florida has seen the number of winter vegetable growers decline from 970 to less that 200 in 1995.

Passage of H.R. 2795 would permit the International Trade Commission to consider the industry as seasonal, thus, safeguarding actions involving perishable agricultural products. In the past Florida winter production has been considered together with 40 other States during different times (none winter) of the year. During the months of November through April only South Florida and Sinaloa, Mexico are in production. This is a winter season with basically two producing areas, few can argue otherwise. H.R. 2795 would only level the playing field. As you know the U.S. Senate has passed S 1463.

I urge you to support of H.R.2795.

Sincerely,

J. Luis Rodriguez,
Senior Vice President

TRICAR SALES, INC.
DISTRIBUTORS

MEXICAN FRUIT & PRODUCE
790 N. Grand Ave. • P.O. Box 607
Nogales, AZ 85628-0607

TELEPHONES:
(520) 287-5891
L.D. (520) 287-3034
FAX (520) 287-7782

February 24, 1996

Philip D. Mosely
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U. S. citizen and voter about H. R. 2795. My livelihood depends on the import and export of products between the United States and Mexico. I fear that H. R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own future well-being, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U. S. citizen, will be taken to court and lose my reputation as a reliable person if I unilaterally try to change a contract, such as my mortgage or car loan. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1 - yet the Florida growers wish to set April 30 as the end of the "import season" - then, under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the sales-person that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,
TRICAR SALES, INC.

FRANK CALIXTRO, SALES MANAGER

VINE-RIPENED-TOMATOES & MIXED-VEGETABLES

TRICAR SALES, INC.
DISTRIBUTORS

MEXICAN FRUIT & PRODUCE
790 N. Grand Ave. • P.O. Box 607
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FAX (520) 287-7782

February 24, 1996

Philip D. Mosely
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

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Thank you for the opportunity to express my views on this issue.

Sincerely,
TRICAR SALES, INC.

Juan R. Moreno

JUAN RAMON MORENO, WAREHOUSE FOREMAN

VINE-RIPENED-TOMATOES & MIXED-VEGETABLES

TRICAR SALES, INC.
DISTRIBUTORS

MEXICAN FRUIT & PRODUCE
790 N. Grand Ave. • P.O. Box 607
Nogales, AZ 85628-0607

TELEPHONES:
(520) 287-5891
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FAX (520) 287-7782

February 24, 1996

Philip D. Mosely
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U. S. citizen and voter about H. R. 2795. My livelihood depends on the import and export of products between the United States and Mexico. I fear that H. R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own future well-being, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U. S. citizen, will be taken to court and lose my reputation as a reliable person if I unilaterally try to change a contract, such as my mortgage or car loan. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abide by them.

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Thank you for the opportunity to express my views on this issue.

Sincerely,
TRICAR SALES, INC.

Amanda Paz

AMANDA PAZ, ASSISTANT SALES

VINE-RIPENED-TOMATOES & MIXED-VEGETABLES

Bill Trout
1313 Ventana Dr.
Ruskin, Florida 33570

February 29, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Moseley:

As a salesman of Florida winter tomatoes, I am very concerned about the staggering increase in the volume of winter vegetables being shipped into the U.S. the past two years.

Due to the peso devaluation in Mexico following NAFTA, the Mexican vegetable growers have no home market. Consequently, they have used the U.S. markets as a dumping ground for their products. This dumping has severely depressed the U.S. markets for winter vegetables. As a result of this action, we are experiencing market prices that return as little as 20% of our production cost.

The Florida winter vegetable industry has reached a crossroads. Unless measures are taken to prevent the Mexican growers from any future dumping actions upon U.S. markets, the only path left for our industry is one leading to extinction.

I support H.R. 2795

Sincerely,

Bill Trout

U.S. COUNCIL OF THE
MEXICO-U.S. BUSINESS COMMITTEE
A COMMITTEE OF THE COUNCIL OF THE AMERICAS
WITH THE SPONSORSHIP OF THE CHAMBER OF COMMERCE OF THE UNITED STATES • AMERICAN CHAMBER OF COMMERCE OF MEXICO, A.C.

February 29, 1996

The Honorable Philip M. Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to you today, on behalf of the U.S. Council of the Mexico-U.S. Business Committee, to express strong opposition to H.R. 2795 and to submit for your consideration a legal analysis of this highly protectionist piece of legislation.

The enclosed paper, written by former Assistant U.S. Trade Representative Charles Roh, demonstrates that H.R. 2795 is inconsistent with the United States' international commitments under the NAFTA and the WTO. Passage of this bill would set a dangerous protectionist precedent for U.S. trade policy and would severely weaken the United States' credibility on trade-related issues, particularly given the U.S. government's recently announced actions to ensure our trading partners' compliance with trade agreements.

By amending the Trade Act of 1974, H.R. 2795 would make it easier to obtain "safeguard" or "emergency action" protection from imports, even in those cases where only a small segment of the domestic industry was at risk. Although introduced in order to assist a tiny segment of the Florida agricultural sector, this legislation risks triggering a protectionist trade cycle which could have a severe negative effect on the entire U.S. economy. In addition to forcing U.S. consumers to pay higher prices, it would likely lead to retaliation against U.S. exports by our trading partners seeking to protect their markets from competitive U.S. goods. Because the United States is the world's largest exporter, we stand to lose the most from such tariff increases.

For the above reasons and those described in the enclosed paper, I urge you to oppose H.R. 2795.

Sincerely,

Robert A. Mosbacher, Sr.
Chairman

Enclosure

1310 G STREET, N.W. • SUITE 690 • WASHINGTON, D.C. 20005 • TEL: 202/639-0724 • FAX: 202/639-0794

U.S. COUNCIL OF THE
MEXICO-U.S. BUSINESS COMMITTEE
A COMMITTEE OF THE COUNCIL OF THE AMERICAS
WITH THE SPONSORSHIP OF THE CHAMBER OF COMMERCE OF THE UNITED STATES • AMERICAN CHAMBER OF COMMERCE OF MEXICO, A.C.

Comments on Miscellaneous Trade Proposals
(Advisory No. TR-17)

Proposed Amendment to Section 201 of the Trade Act of 1974

This paper analyzes the compatibility of H.R. 2795 with U.S. obligations under the North American Free Trade Agreement ("NAFTA") and the World Trade Organization ("WTO") Agreement, and the likely legal consequences if the bill were enacted and the United States took action to restrict imports under its provisions. We think that:

- the proposed amendment is incompatible with the obligations of the NAFTA and the WTO; and
- U.S. action under the proposed amendment would probably result in retaliation against U.S. exports or, perhaps worse, adoption of similar policies by our trading partners that would harm U.S. exports.

I. Background

H.R. 2795 would significantly amend the safeguard provision of Section 201 of the Trade Act of 1974 by expanding the definition of "domestic industry" and adding a definition of the term "like or directly competitive article." The effect of these proposed changes would be to allow the International Trade Commission ("ITC") to exclude certain U.S. producers of the relevant like product from the domestic industry in order to allow "seasonal industries" to obtain relief from import competition under Section 201 of the Trade Act of 1974.

The proposal is intended to reverse the April 1995 determination of the ITC in the Fresh Winter Tomatoes case.[1] In that case, Florida tomato growers argued that producers of tomatoes in the months of January through April should be treated as a "seasonal" domestic industry that was separate from the U.S. domestic tomato industry as a whole. Petitioners based their case on the claim that theirs was a separate domestic industry on the ground that producers in the January to April period "are the only producers producing a product which is 'directly competitive' with the imports." Fresh Winter Tomatoes, Inv. No. TA-201-64, USITC Pub. No. 2881 at I-11 (April 1995).

The ITC held that the petitioners' argument was inconsistent with the statute and not supported by the facts. Id. at I-10-11 and I-13. In reaching its conclusion, the Commission pointed out that "[p]etitioners' proposed domestic industry definition leads to the arguably illogical result of two separate industries producing tomatoes with identical characteristics and uses, some produced in the identical facilities, where the only distinction between them is that one produces products which are 'directly competitive' with imports entering at certain times of the year." Id. at I-11 (citation omitted).

1. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw); 142 Cong. Rec. S441 (daily ed. Jan. 26, 1996) (statement of Sen. Graham) ("This legislation is intended to facilitate a different result by the ITC in cases with facts similar to those presented in the case filed by the winter tomato growers.").

1310 G STREET, N.W. • SUITE 690 • WASHINGTON, D.C. 20005 • TEL: 202/639-0724 • FAX: 202/639-0794

II. H.R. 2795 Violates the GATT/WTO and NAFTA

H.R. 2795, if enacted, would violate the safeguard provisions of the GATT/WTO and the NAFTA (which explicitly incorporates the rules of the GATT/WTO for this purpose). As discussed below, the safeguard rules allow import restrictions under specific circumstances involving serious injury to a domestic industry. H.R. 2795 would violate those rules by redefining the "domestic industry" in a way that is inconsistent with the GATT/WTO rules.

The GATT/WTO rules are set out in Article XIX of the GATT, which authorizes member countries to restrict imports of products where increased imports of those products "cause or threaten serious injury to domestic producers in that territory of like or directly competitive products." Rules for the application of Article XIX measures are set out in the WTO Agreement on Safeguards.

GATT Article XIX, also known as the "escape clause," is an exception to fundamental obligations of the GATT. Article XIX permits member governments to increase tariffs above tariff bindings, impose quotas that would otherwise be prohibited by Article XI, or take other measures ordinarily prohibited by the GATT in response to harm caused by imports -- even where the imports are fairly-traded. In fact, Article XIX is the only exception allowing restrictions of this kind against fairly-traded products. As an exception to the GATT's basic obligations, the safeguard provisions of Article XIX and the Safeguards Agreement would, as a matter of well established GATT interpretation, be construed narrowly against the country invoking the exception. See, e.g., United States -- Countervailing Duties on Fresh, Chilled and Frozen Pork from Canada, BISD, 38S/30, 44 (1991)("In conformity with the practice followed by the CONTRACTING PARTIES in previous cases [citations omitted], the Panel found that Article VI:3, as an exception to basic principles of the General Agreement, had to be interpreted narrowly and that it was up to the United States, as the party invoking the exception, to demonstrate that it had met the requirements of Article VI:3.").

Section 201 of the Trade Act of 1974 implements in U.S. law the safeguard rules of the GATT/WTO and the NAFTA.[2] Section 201 authorizes the President to take appropriate action to assist a domestic industry in cases where the ITC finds that imports are a "substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." 19 U.S.C. § 2251(a). H.R. 2795 would amend Section 201 to permit the ITC to exclude certain producers of the relevant like products from the domestic industry to allow "seasonal" industries to claim relief. It would even permit the exclusion of the very same "seasonal" producers requesting relief to the extent that they produced the same products at other times of the year.

In our view, the proposed amendment would not withstand scrutiny by a WTO panel. Nothing in Article XIX or the WTO Safeguards Agreement suggests that a party may deliberately exclude domestic producers of the like product in defining the domestic industry. Indeed, Article 4 of the Safeguards Agreement states the opposite. It defines "domestic industry" as the "producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products." (Emphasis added.)

In the Tomatoes case, the U.S. industry tried to argue around the requirements of Section 201 by urging a very broad -- and as discussed below, inaccurate -- interpretation of the phrase "directly competitive products." In essence, their argument was that the term "directly competitive" in Section 201 should allow the United States to exclude certain domestic producers of the admittedly like product (fresh tomatoes) and limit the domestic industry to those producers that face competition from imports at particular times of the year.

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2. See S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

The ITC properly rejected this argument in Tomatoes on the grounds that it was inconsistent with the statute and unsupported by the facts.[3] Noting that the Commission must guard against "industry definitions that are drawn artificially narrow simply to make relief more likely," the Commission concluded that the "concept of 'directly competitive' in the statute serves to expand the class of producers of products who may seek and obtain relief, rather that to create a subclass of preferred producers who may seek and obtain relief."[4]

The Commission's ruling in the Tomatoes case was consistent not only with U.S. law, but also with longstanding GATT precedent. "Directly competitive" is a term of art in GATT. GATT panels interpreting Article III.2, which also distinguishes between "like" products and "directly competitive" products, have repeatedly held that "directly competitive" refers to a broader grouping of products than those that would qualify as "like" products. That is, "directly competitive" products would encompass those products that are not sufficiently similar in characteristics to be "like" products, but which have similar end uses and are considered commercial substitutes. See, e.g., Japan -- Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages, BISD, 34S/83, 116-17 (1987)(whiskey, brandy, and vodka found to be separate like products within a single category of directly competitive distilled liquor products on the basis of their use and characteristics); United States -- Measures Affecting Alcoholic and Malt Beverages, BISD, 39S/206, 276-77 (1992)(various types of wine that arguably constituted separate like products "would nevertheless have to be regarded as 'directly competitive' products"); EEC -- Measures on Animal Feed Proteins, BISD, 25S/49, 63-64 (1978) (vegetable and animal proteins for feedstuff could not be considered "like" products but did constitute "directly competitive" products in light of their final use and technical substitutability).

Thus, the term "directly competitive" in the GATT/WTO agreements refers to the nature of the product and its uses and commercial substitutability for the like product in question. The inclusion of "directly competitive" products within the GATT/WTO agreements only serves to broaden the potential category of producers that can seek safeguard relief, i.e., to those categories of producers that, while not producing "like" products, are nevertheless producing a product that is substitutable for the imported product.

H.R. 2795, however, would turn the "directly competitive" concept on its head and use it to define a narrower domestic industry. H.R. 2795 would legislate a reversal of the Tomatoes determination by authorizing the ITC to exclude certain like product producers (including the same "seasonal" producers claiming injury with respect to their production at other times of the year) from consideration in order to define the domestic industry on the basis of the degree of competition from imports at certain times of the year.[5]

Thus, the bill's application of the concept of "directly competitive" products is at odds with the accepted meaning and use of that concept in the GATT/WTO agreements. If enacted and challenged in the WTO, the proposed amendment would almost certainly be

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3. Tomatoes at I-10-11 and I-13.

4. Tomatoes at I-11, note 26. The ITC's conclusion regarding the meaning of "directly competitive" products is supported by the legislative history of Section 201, which defines "directly competitive" products as those that "although not substantially identical in their inherent or intrinsic characteristics [i.e., are not "like products"], are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor." See S. Rep. No. 1298, 93rd Cong., 2d Sess. 121 (1974), reprinted in 1974 U.S.C.C.A.N. 7186, 7265.

5. Proponents of the amendment acknowledge that the intended beneficiaries would be like product producers that compete with imports at a particular time of the year rather than producers of different products that are substitutable for the imported like product. See 141 Cong. Rec. E2388 (daily ed. Dec. 19, 1995) (statement of Rep. Shaw).

found by a WTO dispute settlement panel to be inconsistent with the obligations of the United States under the GATT/WTO agreements. Similarly, because Chapter 8 of NAFTA incorporates the obligations of the GATT in this respect, if it were challenged under NAFTA, the proposal also would be found to violate NAFTA.

III. Consequences of H.R. 2795 for U.S. Industry

The issue raised by the bill involves much more than the interpretation of arcane concepts of the GATT. Enactment of the bill would have several harmful consequences.

First, any safeguard action by the United States under this proposal would almost certainly generate retaliatory trade action by the affected countries. The Safeguards Agreement and NAFTA permit member countries whose products are subject to safeguard actions to suspend "substantially equivalent concessions" to the trade of the country applying the safeguard measure (unless the parties otherwise agree on an amount of trade compensation). Safeguards Agreement, Art. 8(2); NAFTA, Art. 801(4). Because the proposed amendment would not be consistent with the Safeguards Agreement, the three-year moratorium on retaliatory action (set forth in Article 8(3) of the Safeguards Agreement) would not apply. Article 801(4) of NAFTA does not limit the right to retaliate in response to safeguard measures (even if validly imposed) by such a moratorium and, therefore, safeguard actions pursuant to the proposed amendment likewise would be subject to immediate retaliation by Mexico or Canada without even the need for a dispute settlement process.

Second, we would fully expect that safeguard measures taken under this proposal would be challenged in the WTO and/or NAFTA, and, for the reasons discussed above, we think that any such challenge would be successful, resulting in a finding that the United States had infringed its international obligations.

Third, in the very unlikely event that a WTO or NAFTA panel were to find the proposed amendment consistent with U.S. international obligations, the overall consequences for U.S. trade policy would still be negative. Specifically, in that event, we would expect U.S. trading partners to adopt legislation that would redefine the relevant "domestic industry" in a way that made it easier for those nations to impose restrictions on U.S. products. The United States, as the world's leading exporter of agricultural products, would have a great deal at stake were the requirements for applying safeguard actions watered down in the manner contemplated by H.R. 2795. In Mexico, Canada, Europe, or Japan, new restrictions on products such as corn, apples, beef or poultry could be contrived. Moreover, while this development would certainly impact U.S. agricultural exports, the "who's competing with whom" approach contemplated by the bill could be used in the context of any number of industries of vital interest to U.S. exporters.

February 27, 1996

Putting U.S. Meat on the World's Table

Denver

Hamburg

Hong Kong

Mexico City

Osaka

Seoul

Singapore

Taipei

Tokyo

World Headquarters:
Independence Plaza
1050 17th Street
Suite 2200
Denver CO 80265

303/623-MEAT (6328)
Fax 303/623-0297

Phillip C. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

I write in reference to H.R. 2795, the bill introduced by Representative Clay Shaw to redefine "domestic industry" as "seasonal industry," under our (U.S.) trade sanctions and safeguard legislation. The U.S. Meat Export Federation views this bill as a serious threat to the integrity of the NAFTA and open trade in general, and is strongly opposed to its passage.

The U.S. red meat industry has expended tremendous amounts of money and human energy over the years to assist the United States Government in getting foreign markets open for U.S. red meat products, with some measure of success. With the more level playing field which has resulted from these efforts, the U.S. is gradually becoming a net exporter of both beef and pork. This trend cannot be maintained if the United States Government is going to undermine the current world trading system with legislation such as that envisioned in H.R. 2795.

H.R. 2795 seems to us to be in direct violation of both the spirit and the letter of both the NAFTA and the WTO/GATT. It is protectionist legislation which will invite retaliation and mimicking, to the detriment of U.S. exports of such things as beef and pork.

There are numerous countries in the world being pressured by their domestic constituencies to take policies and measures that would tend to water down if not eliminate the gains made in the Uruguay Round of Multinational Trade Negotiations and the NAFTA. The Mexicans, in particular, are just waiting for a good excuse to take measures to inhibit imports of pork and beef from the United States. This bill would give them just the excuse they've been looking for. Even with a 55 percent drop in sales due to the weakening of the Peso, U.S. beef and pork exports to Mexico in 1995 were valued at over $186 million. As the Mexican economy stabilizes this year, we expect our exports to begin to recover. But this recovery will be shortlived if H.R. 2795 is passed by the Congress because the Mexicans are certain to take advantage of such a precedent by imposing similar trade barriers of their own.

It does not make sense to jeopardize $55 billion worth of U.S. agricultural exports to take care of the Florida tomato industry, but that is what this bill would do.

We respectfully request that the bill be defeated, or, better yet, that it be withdrawn from consideration.

Sincerely,

Philip M. Seng
President & CEO

PMS:tc

United States-Mexico Chamber of Commerce
Cámara de Comercio México-Estados Unidos

1726 M Street NW, Suite 704
Washington, DC 20036
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Amb. James R. Jones

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Tampa, FL 33602
Phone: 813/222-8850
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Northwest Chapter
P.O. Box 4770
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Melchor Ocampo 193, Oficina B
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Monterrey Chapter
Av. Vasconcelos 209
Col. Res. San Agustin
66260 Garza García, N.L.
Tel: 8/378-6335
Fax: 8/378-6439

February 29, 1996

The Honorable Philip M. Crane
Chairman
House Ways and Means Trade Subcommittee
600 17th Street NW
Washington, DC 20506

Dear Congressman Crane:

The United States-Mexico Chamber of Commerce wishes to express its opposition to H.R. 2795. The proposal to redefine a "domestic industry" as a "seasonal industry" when determining eligibility for increased import barriers would violate NAFTA and WTO agreements, as well as the accepted purpose of the safeguard law. The plan will result in highly restricted tomato imports from Mexico, an action contrary to terms negotiated under the North American Free Trade Agreement and an action with far-reaching implications.

The United States has been a world leader, promoting NAFTA in the region and free trade throughout the world. The proposal to redefine a domestic industry, however, would encourage other nations -- especially Mexico -- to employ the "seasonality" principle to restrict U.S. exports, including a wide range of commodities such as corn, apples, barley, potatoes and peaches. The measure would diminish the ability of the U.S. to hold other nations to trade commitments. And the legislation, while targeted at Mexican growers, could disrupt imports from seasonal products in Europe, Latin America and elsewhere. The measure, if adopted, would set a protectionist precedent.

The United States-Mexico Chamber of Commerce believes there is no justification for the proposed action, only negative consequences. We respectfully urge the trade subcommittee to vote against H.R. 2795.

Sincerely,

Albert C. Zapanta
Executive Vice President

The United States-Mexico Chamber of Commerce, incorporated in 1973 in the District of Columbia as a 501 (c) 6 non-profit corporation, is a chartered bi-national chamber promoting trade and investment between the two American nations. The USMCOC represents nearly 1,000 businesses and maintains offices in Washington, D.C., Los Angeles, Dallas, New York, Denver, Chicago, Tampa, Seattle, Mexico City and Monterrey

February 28, 1996

The Honorable Dick Armey
Chairman
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Armey,

I am writing to express my opposition to H.R. 2795 introduced by Cong. Clay Shaw (D-FL). As a U.S. Customs House Broker, my livelihood and that of my 20 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. If the bill becomes law, a dangerous precedent will be set for other countries that may wish to enact similar changes in their laws. American exporters of such products as wheat, pork, dairy, heavy machinery and electronics might suddenly find themselves facing "seasonal" competition in other countries, and could be denied the opportunity to compete fairly in various export markets. As the world's largest exporter, The United States has the most to lose from introducing new forms of misguided, protectionism legislation.

2. When NAFTA was negotiated and signed by The U.S., Mexico and Canada, all parties were aware that there would be "winners and losers". Without question, one of the biggest losers in NAFTA has been Mexico where countless of industries has closed due to increased competition from the United States compounded by their severe economic crisis. But before Mexico's problems began, one of the biggest winners in NAFTA was The U.S. including Florida. In a study just released by Dean International "*NAFTA Trade: Past, Present and Future*", Florida's exports to Mexico have increased from **$219 in 1987 to $844 million in 1994 nearly 12% a year, creating over 13,054 direct jobs.** By the year 2000, this same study projects Florida's export to Mexico to reach **$1.7 billion and create 29,249 direct jobs.** These same sentiments are echoed by the Florida Department of Commerce: *"it was always given that there was going to be some losses to farmers over the short term ..I think we are the winner in this."*, according to Ms. Jessica Cary spokesman for the FDOC. It seems ironic and counter-productive that Cong. Shaw would want to introduce legislation that would destroy such prosperity and potential for his constituency.

U. S. CUSTOMS BROKERS NOGALES, ARIZONA
PHONE 602/281-0672 FAX 602/281-4506 P. O. BOX 2807 - 85628

3. H.R. 2795 would also diminish the ability of the U.S. to hold other countries to their trade commitments. The Clinton Administration, recognizing the fundamental importance of ensuring that trade promises are kept, recently launched a high-profile initiative to "enforce" existing trade agreements. If the United States breaches it own obligations under those same agreements, it would seriously undermine the "enforcement" initiative proposed by The President. U.S. industries hurt by the failure of foreign governments to comply with their trade obligations could find it harder to obtain adequate remedies.

4. Although the Shaw legislation was proposed to protect Florida growers from imports of Mexican tomatoes, it could disrupt imports of numerous seasonal products from Europe, Canada, Israel, Chile and elsewhere that are consumed or processed throughout the United States. Imports could face new barriers whenever a group of "seasonal" U.S. producers (no matter how small) are injured by import competition.

I urge you to oppose this legislation and any other bill that might violate the spirit NAFTA and the furtherance of Free and Fair Trade. In the end, when such measures are proposed, it is the American consumer who is affected the most by limiting their economic right to the best, the least expensive and the finest quality of products available anywhere in the world, including the United States of America. Thank you for your consideration of my views on this issue.

Sincerely,

Guillermo Valencia
President

GV:mv
cc:
Senator John McCain
Senator Jon Kyl
Cong. Jim Kolbe
Cong. Ed Pastor

February 20, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Gentlemen:

HR Bill 2795 is all about why we have GATT and NAFTA.

For us to now create a new system for tariff rates on a weekly or a monthly basis is opening the door for our competitor countries around the world to disregard the new rules of trade we just signed.

I have received a number of position papers so that I could write to you gentlemen with understanding and brilliance. The bottom line is that if you pass this type of legislation, you are going to make the American consumer pay more money for food. The American worker can't afford to live on his present income, and Congress doesn't have the right to pass laws that protect the few against the total population.

Please don't create laws that raise the costs of living in the United States

Sincerely,

James Eisenberg
Chairman of the Board

JE/ef

Vienna Sausage Manufacturing Company
2501 North Damen Avenue, Chicago, Illinois 60647, (312) 278-7800 / Fax 312-278-4759

Fred Webb
2633 S.E. 19th Ct.
Homestead, Florida 33030

February 29, 1996

Phillip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re: H.R. 2795

Dear Mr. Moseley:

For the past 15 years I have been employed in the Florida winter vegetable industry. I have an upper management position with Grower-Packer-Shipper of Florida winter tomatoes and vegetables, our company has been in existence for over 50 years. In the last two years I have seen our industry experience tremendous financial loses, that seriously threaten to destroy Florida winter vegetable industry.

The last two growing seasons has witnessed the dumping of vegetables and tomatoes into the U.S. markets by Mexican vegetable growers. This dumping action has resulted in market prices that are as much as 80% below the break even cost to our farms.

The survival of all our jobs (over 500 people) are now in imperil, all we ask is the opportunity to continue to be the main source of Americas winter vegetables.

I support the H.R. 2795.

Sincerely,

Fred Webb

WEST COAST TOMATO, INC.

McClure Farms • West Coast Farms

P.O. Box 936 • Palmetto, Florida 34220-0936
Phone: 813/722-4545 • FAX: 813/729-6778

February 28, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

RE: House Bill 2795

Dear Mr. Moseley:

I strongly urge you to vote in favor of the above referenced bill amending the Trade Act of 1974 to allow the International Trade Commission to take the seasonality of a perishable industry into account when making an injury determination in an import surge relief case. I support the comments on the bill already filed by the Florida Tomato Exchange and the Florida Fruit & Vegetable Association.

The passage of this bill is critical in the attempt to save Florida's second-largest industry. Hundreds of Florida farms have already been driven out of business. Total tomato imports from Mexico were 18,899,000 25-lb. equivalents through week ending January 13 for the 1995-96 season. This compares to only 8,986,000 for the 1994-95 season and 8,818,000 for the 1993-94 season.

The proposed change under HR 2795 would be entirely consistent with U.S. international legal obligations, including NAFTA and the WTO. This is confirmed by the Administration, which actively supports the change. Please support passage of HR 2795.

Sincerely,

WEST COAST TOMATO, INC.

Dan P. McClure

Dan P. McClure
President

WEST FLORIDA AGRO, LTD.
P.O. BOX 2809
IMMOKALEE, FLORIDA 33934
(941) 657-4421

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515
RE: Bill H.R. #2795

Dear Sir:

West Florida Agro, Ltd. is a Florida Winter vegetable producer. Our family business has been growing vegetables in Florida for 40 years. We employ approximately 100 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Lou Lipman
President

LL:lmd

WHITWORTH FARMS

11050 STATE ROAD 7 • BOYNTON BEACH, FLORIDA 33437

Pompano Beach (305) 426-1070

Boynton Beach (407) 734-5220
FAX: (407) 734-8122

hillip Moseley, Chief of Staff
ommittee on Ways and Means
.S. House of Representatives
102 Longworth House Office Building
ashington, D.C. 20515

Re: H.R. 2795

or the past fifty years, my family has farmed in Broward and Palm each counties, Florida. Two years ago, the President expressed his ersonal commitment to protect the future of our state's produce ndustry. This season, a flood of cheap Mexican produce into the nited States has made it impossible for Florida growers to sell egetables at or above the cost of production. The devaluation of he peso has given Mexican growers an enormous and unfair advantage; heir cost of production is now dramatically lower than ours. Also, excian growers do not bear the cost of the many environmental, labor, arketing and food safety guidelines that Florida growers practice.

s an American, I am very frustrated. In my opinion, it is not fair or does it seem wise or intelligent that my country does not support ts own countryman in fair business enterprises. What is the value o the stableness and preservation of our country when we allow the umping of foreign produce into the U.S.A. to the extent it is putting he agricultural industry out of business? It is true we are a global orld, but should we allow the destruction of the agricultural industry, nd all the many related industries, as a result of unfair laws and egulations to our own countryman?

AFTA offers no relief to the Florida grower; it is not structured to ddress the far-reaching ramifications of the peso's dramatic evaluation. We need immediate action now, and, therefore, ask that you lease support legislation H.R. 2795 that will allow the International rade Commission to provide trade relief to the Florida growers who irectly compete with producers in Mexico.

lorida's vegetable growers, and the millions of Floridians associated ith this industry, would be most grateful for your immediate attention o the Mexican imports issue.

espectfully submitted,

HITWORTH FARMS

ebruary 26, 1996

WILLIAM F. Joffroy CUSTOMS BROKERS INC.

ARIZONA
NOGALES
NACO
DOUGLAS
MEXICO

NOGALES FOREIGN TRADE ZONE • NOGALES, ARIZONA 85628-0698 • P.O. BOX 698 • PH. (520) 287-1500
PRODUCE OFFICE • PH. (520) 287-1515 • FAX (520) 287-1524

BRANCH OFFICES:

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FAX (520) 364-5467

NACO, ARIZONA 85620
P.O. BOX 787
PHONE (520) 432-2394
FAX (520) 432-4066

February 23, 1996

Reference: H.R. 2795

Phillip D Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Mosely:

I am writing to you to express my concerns as a U.S. businessman about H.R. 2795. My livelihood and that of my 85 employees depend on the import and export of products between the United States and Mexico. I fear that H.R. 2795 will jeopardize much of the progress that has been made in improving trade relations between the two countries in recent years. Beyond my immediate concerns about my own business, I also object to the bill for the following reasons:

1. I believe in the sanctity of agreements and contracts. The provisions for import relief for perishable agricultural commodities were just negotiated in the Uruguay Round as well as the NAFTA. I, as a U.S. entrepreneur, will be taken to court and lose my reputation as a reliable business partner if I unilaterally change a contract. The United States must set a positive example in the world trade arena by living up to its own end of treaties if it expects any other nation to abode to them.

2. The bill will open the import relief mechanism to arbitrary definitions of seasonal industry that will serve only to obscure reality. For instance, if a tomato plant in Florida is harvested on both April 30 and May 1-yet the Florida growers wish to set April 30 as the end of the "import season"--then under this proposed law, that individual tomato plant, the packing house that sorts and packages the tomato, and the salesman that sells the tomato would be part of two different seasonal industries. This type of seasonal industry definition under the proposed law is totally arbitrary and does not correspond to how agricultural business decisions are made.

Thank you for the opportunity to express my views on this issue.

Sincerely,

William F. Joffroy, Inc.

William F. Joffroy, Jr.
President

WFJJR/elm

WILLIAMS FARMS
1300 N. 15TH STREET • IMMOKALEE, FLORIDA 33934 • (813) 657-5188

February 28, 1996

Philip Moseley
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20516

RE: Bill # H. R. 2795

I am a third generation Florida winter vegetable farmer. I have had my own business for forty years. I employ fifty full time employees and fifteen hundred seasonal employees. Letters that are accompanying mine are from employees and local businesses that I trade with.

The dramatic increase in winter vegetables being shipped into this country over the past two growing seasons has destroyed the ability we have to continue farming.

The Mexicans dump produce below the cost of production due to the peso devaluation. This drives prices down to as little as 50% of our production cost.

Without a seasonal definition of our industry, which is the only American production area for vegetables between November and May, we cannot even apply to the International Trade Commission for relief.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. I strongly support passage of H. R. 2795.

Sincerely,

James E. Williams, Jr.

Bruce Hendry Insurance & Real Estate
711 West Main Street
Immokalee, Florida 33934
(813) 657-3614

February 28, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

RE: H. R. 2795

We are a business supported by the Florida winter vegetable industry in our area.

The dumping, surges and incredible volume of Mexican winter vegetables spurred by the peso devaluation is destroying the Florida winter vegetable industry and my business.

H. R. 2795 would allow us to apply to the International Trade Commission for relief. We support passage of H. R. 2795.

Sincerely,

(IDENTICAL OR SIMILAR LETTER ALSO RECEIVED FROM 86 OTHER INDIVIDUALS)

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Re. H.R. 2795

Dear Representative Moseley:

I urge you to vote FOR H.R. 2795. I have lived in Immokalee, Florida, for 42 years and know that the financial stability of this area is directly dependent upon the success of the farmers.

The local merchants, the non-agricultural employees, the churches, the real estate buisness and many others are directly dependent on the success of the farmers.

Many, many independent farmers in this area have in the past year or so gone into bankruptcy. The dumping of Mexican produce during the winter season is having an adverse effect on our town.

Please vote FOR H.R. 2795.

Sincerely yours,
Ada Pelham

Address: 910 Palm Dr.
Immokalee Fl. 33934

(IDENTICAL LETTERS ALSO RECEIVED FROM 8 OTHER INDIVIDUALS)

WORLD AGRICULTURE, INC.
P.O. BOX 2809
IMMOKALEE, FLORIDA 33934
(941) 657-4421

March 1, 1996

Philip Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515
RE: Bill H.R. #2795

Dear Sir:

World Agriculture, Inc. is a Florida chemical supplier to the winter vegetable industry. We employ approximately 10 workers on a weekly basis.

Over the past 2 seasons, the unprecedented increase in exportation of winter vegetables from Mexico into the U.S. market and the periodic "dumping" of products at prices below our production costs, has destroyed our ability to continue farming. Peso evaluation in Mexico has spurred this "dumping", driving prices to as low as 50% below our production costs.

Without legislative language defining Florida vegetable production as a seasonal industry, which is the only American production area for vegetables between November and May, we cannot even petition the International Trade Commission for relief.

We strongly support the passage of House Bill #2795.

Sincerely,

Bill Lipman
CEO

BL:lmd

H.R. 2822

To amend the Tariff Act of 1930 to provide authority for the temporary suspension of antidumping and countervailing duties under limited market conditions.

COMMENTS OF THE AD HOC COMMITTEE OF DOMESTIC NITROGEN PRODUCERS

The Ad Hoc Committee of Domestic Nitrogen Producers ("Ad Hoc Committee") is a coalition of major U.S. nitrogen fertilizer manufacturers.1/ We are writing in response to your advisory notice of January 31, 1996 to indicate our strong opposition to H.R. 2822, which would permit the Commerce Department to suspend antidumping and countervailing duties. We believe that the proposed short supply or "duty suspension" provisions embodied in H.R. 2822 would seriously jeopardize the effectiveness and objectivity of our trade laws. We also object to the proposal to grant the Administration authority to waive the unfair trade laws for certain imports of commercial Russian uranium. Our views on these issues are explained below.

Duty Suspension Provisions (H.R. 2822)

The U.S. nitrogen fertilizer industry is modern and efficient, with state of the art production which supplies a variety of nitrogen products to both domestic and international markets. In large part because we participate in international markets and understand fully the disruptive impact of antidumping and countervailing duty actions, we have always been particularly reluctant to make use of those statutes. Nevertheless, the availability of relief under U.S. trade laws has proven to be critical to the very survival of our industry. In 1987, the Department of Commerce issued antidumping orders with respect to urea (a nitrogen fertilizer) from the U.S.S.R., East Germany and Romania after the volume of urea exports from these countries had more than doubled, capturing almost 18 percent of the U.S. market and depressing urea prices by more than 50 percent, to levels which were well below Western producers' cost of production. The effective operation of the antidumping laws restored a level playing field in the U.S. urea market and prevented our industry from literally being destroyed by dumped imports.

The relief obtained by U.S. urea producers in 1987 was achieved at significant cost in terms of both financial and human resources. The industry, knew, however, that its ultimate ability to obtain and maintain relief under the antidumping laws would be governed strictly by the detailed requirements of the antidumping statute and that, unlike other trade laws, political considerations would not affect the outcome. We are extremely concerned that H.R. 2822 would remove this objectivity and reliability of the antidumping and countervailing duty law as a vehicle for addressing unfair trade. We believe that the duty suspension authority envisioned in H.R. 2822 is both unnecessary and unwise.

First, the broad discretion to suspend duties whenever "prevailing market conditions related to the availability of the product . . . make imposition of such duties inappropriate" would create a loophole of such proportions that relief from unfair trade would no longer be certain. The Administration could use this "loophole" to suspend duties based on political and other extraneous considerations. Moreover, it is our view that there has been a noticeable tendency, in any event, toward politicization of unfair trade proceedings. Current law has served as a meaningful check on such tendencies. The creation of a "suspension" loophole would simply provide a convenient vehicle for politicization.

Second, current law provides numerous mechanisms for addressing situations in which products are not produced by or available from domestic producers. "Like product" analyses undertaken by the International Trade Commission and Department of Commerce scope determinations are key aspects of existing law

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1/ The current members of the Ad Hoc Committee are: Arcadian Corporation; CF Industries, Inc.; Coastal Chem, Inc.; First Miss Fertilizer Inc.; J.R. Simplot Company; Mississippi Chemical Corporation; and, Terra International, Inc.

in this regard.2/ In addition, as a practical matter, if goods covered by an antidumping order are otherwise unavailable in the U.S. market, the foreign supplier, or U.S. importer should be able to easily charge a non-dumped price for such goods, resulting in the ultimate payment of no duties on such entries. Thus, from a legal as well as a commercial perspective, suspension authority is unnecessary.

Third, as producers of commodity products, and products which typically are subject to seasonal supply and pricing fluctuations, we are particularly alarmed at the prospect of broad "market condition" based suspension authority. Commerce Department duty suspension decisions could not only subject U.S. producers to artificially depressed prices during key marketing periods, but could also destroy normal market cycles. The Commerce Department is not equipped and should not be licensed to micro-manage conditions of various U.S. markets through duty-suspension actions.

U.S. antidumping laws have served as a reliable safeguard for domestic industries suffering from unfair trade. We strongly oppose H.R. 2822, which would, in our view, seriously weaken those laws and undermine their reliability and integrity. We urge the Committee to reject this bill.

Uranium Waiver Authority

We also wish to express our opposition to the Clinton Administration's proposal to provide the President with unprecedented authority to waive U.S. unfair trade laws as to a commercially traded product. We understand that the Administration seeks authority to waive the application of the trade laws as to certain commercial-grade Russian uranium derived from weapons, based on alleged national security considerations. The law currently does not permit the antidumping laws to be waived as to any commercially traded goods.3/ We are extremely concerned that Congress not create a new "national security" exception for the application of our trade laws to commercial products. Congress should be particularly reluctant to do so without full public hearings and detailed consideration by the Ways and Means and Senate Finance Committees.

We believe that this precedent-setting request raises many difficult issues and, if granted, would weaken the integrity and political neutrality of our trade laws. Moreover, we are very concerned with a proposal which would have Congress simply relinquish to the Executive Branch the authority to decide when and if the trade laws should apply to particular commercial goods. We urge the Committee to reject the Administration's uranium waiver request, and, to ensure, at a minimum, that full hearings and extremely detailed consideration of the nature, basis and implications of this unprecedented proposal are undertaken.

We would be pleased to provide additional comments or to provide testimony at any hearing which addresses these issues.

2/ Various legal mechanisms currently available to address "short supply" situations were described in a December 4, 1995 letter from Susan Esserman, Commerce Department Assistant Secretary for International Trade to Congressmen Levin and Houghton, reprinted in Inside U.S. Trade, December 8, 1995 at 21-22.

3/ Thus, 19 U.S.C. § 1677(20) provides that even commercially traded goods imported by the Government are subject to applicable antidumping and countervailing duties. This provision only permits exemption of merchandise imported by the Defense Department if it has "no substantial non-military use".

Statement of
AK Steel Corporation,
Bethlehem Steel Corporation,
Inland Steel Industries, Inc.,
LTV Steel Company,
National Steel Corporation,
and
US Steel Group, A Unit of USX Corporation

Regarding the
Temporary Duty Suspension Act
and the
United States Enrichment Corporation Privatization Act
Submitted to the Committee on Ways and Means
Subcommittee on Trade
March 1, 1996

We appreciate the opportunity to submit a statement on H.R. 2822, the Temporary Duty Suspension Act, and the United States Enrichment Corporation Privatization Act. This statement sets out the views of the six largest integrated steel producers in the United States: AK Steel Corporation, Bethlehem Steel Corporation, Inland Steel Industries, Inc., LTV Steel Company, National Steel Corporation and US Steel Group, a unit of USX Corporation.

Summary

H.R. 2822, the Temporary Duty Suspension Act, would provide the U.S. Department of Commerce (DOC) with discretionary authority to suspend the imposition of antidumping or countervailing duties on a specified product if the DOC determines that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." This legislation would politicize the application of U.S. trade laws, undermine the effectiveness of those laws as a remedy against unfair foreign trade practices and give the DOC inappropriate and unprecedented power to create industrial policy. In fact, the DOC has opposed in the past, and continues to oppose, the granting of such authority. Availability issues can be addressed adequately under mechanisms provided for under current law. Our antidumping and countervailing duty laws have the effect of encouraging foreign nations to open their markets and rely less on subsidies and dumping to support uneconomic producers. H.R. 2822 would subvert our ability to achieve these goals. We therefore urge the Subcommittee to reject the bill.

The Domestic Steel Industry

Successful competition in today's global marketplace requires a vigorous manufacturing base. Steel is fundamental to that base. It is essential to manufacturing, infrastructure and defense -- the mainstays of every advanced economy.

In the United States, steel is a $45 billion annual business, providing quality, high paying jobs for its 170,000 employees and supporting 500,000 retirees and their dependents. These jobs are vital to the economic health of America's heartland. In addition, steel-generated demand for key raw materials, such as coal, iron ore, and limestone, provides employment in a number of regions where other jobs are scarce. The steel industry is also a major consumer of computers and other high-tech equipment and makes extensive use of the nation's rail, trucking and shipping industries. As a result, steel is a major contributor to the economy and to the tax base -- particularly that of states and local communities.

Today, the United States has a world class steel industry. Criticized in the past for lagging competitiveness, the U.S. steel industry in the 1980s undertook a painful restructuring. During that period, $35 billion was invested in modernization --

more than the industry's total cash flow. The work force was cut by 57 percent from 1980 to 1992, eliminating 221,000 jobs, and 450 facilities were closed. Reflecting this massive overhaul:

- The U.S. steel industry is now among the world's low cost producers for the U.S. market.
- U.S. labor productivity (man hours/ton) in the steel sector is the highest in the world.
- U.S. steel quality is second to none.
- The U.S. is emerging as a center of innovative steelmaking technology.

Foreign Unfair Steel Trade Practices

Because of the strategic importance of steel, governments around the world have sought to establish, nurture and protect their own steel production capacity. As a result, world trade in steel has been more distorted by government intervention than in any other manufacturing sector. These distortions, which have seriously damaged a highly competitive and strategically important U.S. industry, generally take two forms.

- Dumping. Cartels and comprehensive import protection have restrained competition and diminished market pressure on foreign producers to cut back excess capacity -- giving rise to injurious dumping. Dumping occurs when producers can practice price discrimination between markets, selling products at a higher price in their home market than in export markets. This is possible when imports into their own market and internal competition are restricted.
- Subsidies. Foreign governments subsidize their steel producers directly and indirectly. Typical subsidies include equity infusions, soft loans, "restructuring" aid, debt relief, grants and below-market interest rates. Subsidization of foreign steelmakers is staggering, amounting to over $100 billion between 1980 and 1992.

After exhaustive investigation and analysis, the United States Government has confirmed the enormity of unfair trade in the steel industry. In its 1993 investigation of foreign trade practices, the DOC and the U.S. International Trade Commission (ITC) found massive subsidies and pervasive dumping, and imposed weighted-average countervailing and antidumping duties of 37 percent on many foreign steel products.

Despite these actions, unfair trade practices continue. For example, in 1994 Spain announced a plan to give more than $3.1 billion in debt relief and new equity capital to the parent company of two major Spanish steel producers. In 1995, the DOC, in its annual administrative reviews of antidumping orders, found that many foreign steel producers continued to dump their products in the U. S. market. The Uruguay Round agreements, while positive in some respects, do not eliminate dumping and the cartels that make it possible, or prohibit harmful subsidies.

U.S. Antidumping and Countervailing Duty Laws

Under U.S. trade laws, antidumping and countervailing duties may be imposed on unfairly traded imports in an amount equal to the level ("margin") of dumping or subsidy determined to exist by the DOC after a lengthy and thorough investigation. This process includes extensive opportunities for foreign producers to submit detailed information in response to complaints and findings.

Duties are only imposed, however, if the ITC also determines -- after an independent investigation which provides further opportunities for foreign producers to present their arguments -- that material injury has occurred. This system is designed to ensure that the trade laws offset only the precise amount of unfair advantage provided to the unfairly traded imports.

The discretion provided to the DOC and the ITC in making these determinations has been carefully circumscribed by Congress over time to ensure that they are made on the basis of the facts, consistent with the detailed statutory standards established by the Congress, and are not influenced by political pressures. Both petitioning U.S. industries and foreign respondents also have extensive rights to appeal DOC and ITC determinations to the federal Court of International Trade.

The fair and consistent application of these unfair trade laws is critical to U.S. steel producers who must compete in a market characterized by pervasive foreign subsidies and dumping. Unlike the U.S. market, which is open, private and subsidy-free, foreign steel producers often operate in home markets that are effectively closed to import competition and benefit from government subsidies.

The Temporary Duty Suspension Act

H.R. 2822 would fundamentally alter the U.S. trade laws by granting broad discretion and little guidance to the DOC regarding when antidumping and countervailing duties would be applied:

- The legislation gives the DOC authority to suspend imposition of antidumping or countervailing duties whenever the DOC determines that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." The bill provides no standards as to when market conditions might justify such a determination, nor does it provide for judicial review.

- The bill would permit the DOC to suspend the duties "in whole or in part," thus giving the DOC discretion to reduce the duty imposed below the level of the margin of dumping or subsidy previously determined to exist under the statute.

- The duty suspension could be granted initially for one year, although the bill also provides that the duty suspension may be extended for an unlimited number of one-year periods. The only basis for reimposing duties once suspended is if the DOC determines that there is "insufficient basis for continuing the suspension."

Why A Temporary Duty Suspension Provision Should Be Rejected

The stated purpose of this legislation is to provide for an exception to the trade laws when the product is deemed to be not available from U.S. producers. This bill, and similar proposals in the past, have been characterized as remedying "short supply" situations.

However, "short supply" is an intentionally misleading concept devised by foreign producers, intent on shielding their unfair trade practices from offset. It is based on the notion that due to the existence of an antidumping or countervailing duty order, a product is not available in the domestic market. An antidumping or countervailing duty order, however, is not a quota. Unlike a quota or voluntary restraint agreement, an

antidumping or countervailing duty order does not in any way limit the amount of foreign merchandise that can come into this country; it merely requires that the imported merchandise be sold at a fair price. Hence, what a duty suspension mechanism would really provide is the right to obtain imported goods at dumped and subsidized prices.

During consideration of the Uruguay Round implementing legislation in the last Congress, amendments were offered in Committee to create a specific "short supply" exemption to the U.S. trade laws. The amendments were opposed by the Administration -- by the very DOC which the amendment would have vested with new and unwanted discretion. Both the House Committee on Ways and Means, by a 23-15 vote, and the Senate Committee on Finance, by a 13-7 vote, rejected these short supply proposals.

These amendments were rejected for sound policy reasons which apply equally or in greater measure to H.R. 2822. Indeed, H.R. 2822 provides even fewer standards and more discretion than the previous proposals. It should also be rejected, for the following reasons:

1. Adoption of a temporary duty suspension provision would effectively undermine existing U.S. trade laws.

The purpose of the trade laws is to provide a remedy against foreign unfair trade practices by offsetting the amount of the dumping or subsidy provided to the imports under investigation. This guarantees that the affected imports are priced fairly, but it does <u>not</u> limit the quantity of imports. Any provision which grants the DOC the authority to waive antidumping or countervailing duties is therefore unnecessary to ensure an adequate supply of a product. Rather, such a provision would simply reward those foreign companies that have driven U.S. products out of the market through dumping or subsidies by denying U.S. companies the opportunity to invest in new plants and equipment.

Consumers lose when foreign dumping and subsidies drive U.S. producers from the market and reduce competition. By allowing U.S. producers to re-invest, antidumping and countervailing duties can lead to a more competitive market, serving the long-term interest of consumers (including industrial consumers) and the economy as a whole.

Proponents of a temporary duty suspension provision argue that it is only intended to help users of products subject to duties to remain competitive in the world market. It is not possible, however, to remove or reduce duties without encouraging foreign producers to continue dumping or foreign governments to continue subsidizing. As long as unfair trade practices are allowed to keep prices artificially low, it is not commercially feasible for U.S. industry to re-invest and again manufacture the products involved. Consequently, suspension of duties -- which are calculated to result in a "normal" price, i.e., a price that would prevail in the market absent subsidies or dumping -- even if labeled "temporary," would simply create a self-fulfilling prophecy. By continuing the subsidy and dumping-induced market distortions, potential U.S. producers will, of economic necessity, avoid the market.

2. A temporary duty suspension provision would politicize the application of U.S. trade laws.

The legislation establishes no standard regarding when prevailing market conditions make imposition of antidumping or countervailing duties inappropriate and makes no provision for judicial review. At best, this makes bureaucrats at the DOC the sole judges as to when market conditions justify providing relief to a particular industry, with no system of checks and balances for ensuring that decisions are fair and unbiased. At worst, it would made the DOC a target for lobbying efforts of foreign and domestic producers that could result in decisions made for purely political purposes. The DOC has opposed such a grant of discretion for this and other reasons.

An important and essential feature of the current trade laws is that they provide clear and objective standards for determining whether dumping or subsidies have occurred; their impact, if any, on product prices; and, whether a U.S. industry has been injured by such practices. These determinations are made under a well-understood process which is open and transparent to all affected parties. The temporary duty suspension legislation would introduce major new uncertainties into the trade laws and open the door to their arbitrary application.

Moreover, the additional uncertainties created by a temporary duty suspension could discourage U.S. producers who have been injured by unfair trade practices from ever seeking relief. The current process is time-consuming, expensive and without any guarantee that the DOC or the ITC will agree with petitioners who claim injury. A temporary duty suspension provision, by making it possible to overturn objective decisions on the basis of political considerations, would deter all but the financially and politically strongest industries from pursuing the remedies provided by the trade laws.

A temporary duty suspension provision is not a finely-tuned response to a narrow, technical problem. Rather, it would undermine the credibility of our antidumping and countervailing duty laws by politicizing them and undermine their viability by discouraging their use.

3. The temporary duty suspension provision would give the DOC the power to establish industrial policy.

In addition to the potential for political abuse, the discretionary authority that would be provided to the DOC under H.R. 2822 would effectively allow the implementation of a national industrial policy based on a particular Administration's views as to which industries are important to the economy. Currently, the DOC is limited to making factual findings regarding the existence and extent of unfair trade practices. The Congress should not give the executive branch or the DOC bureaucracy the ability to use the trade laws to determine which industries "deserve" relief under the U.S. trade laws and which do not.

4. Providing the DOC with the discretionary authority to suspend antidumping and countervailing duties would interfere with the proper role of the ITC.

To obtain relief under the trade laws, a U.S. industry must demonstrate to the ITC that dumped or subsidized imports are causing or threatening to cause injury to that industry. To find injury, the ITC must determine that U.S. industries compete or will compete with the imported products. The injury analysis is

rigorous and U.S. producers which receive high antidumping and countervailing duty margins from the DOC often are denied relief by the ITC. Giving the DOC authority to suspend duties on products found by the ITC to compete with domestic goods would permit the DOC to overrule the ITC. A temporary duty suspension provision would also, wastefully, require DOC to replicate ITC's analysis of U.S. market conditions.

5. A temporary duty suspension mechanism would be prone to abuse.

The proponents of a temporary duty suspension provision argue that the provision would be used only where U.S. companies require products with unique specifications that no U.S. products meet. However, creating such a loophole would simply encourage purchasers of dumped or subsidized goods to draft their specifications narrowly enough so that only the dumped or subsidized goods met the specifications. Evaluating non-availability claims would necessarily result in the DOC bureaucracy making judgments about whether adequate substitutes exist for the products at issue in terms of performance, price and quality. These are judgments which the DOC, by its own admission, is ill-equipped to make and which would extend the heavy hand of government into fundamental business decisions.

6. A temporary duty suspension mechanism is unnecessary to accomplish its stated objective.

Any real instances of no domestic supply can be remedied under existing law through changes in the scope of an antidumping or countervailing duty order. Where there is no U.S. production of a product that can compete with the imported good subject to an antidumping or countervailing duty order, or no industry interest in producing the product, the order may be amended to exclude that product. The steel industry supported such adjustments willingly both in the 1993 investigations and after the determinations were made. For example, the DOC recently exercised its authority to exclude products from the scope of antidumping duty cases. In November 1995, Canadian producers requested that the DOC conduct a changed circumstances review to determine that a particular kind of cobalt-free plate be exempt from antidumping duties. The domestic industry did not oppose excluding the product from the antidumping duties. Just this week, the DOC determined that the domestic industry's acquiescence in having antidumping duties no longer apply to the product constituted changed circumstances and, as a result, no antidumping duties will be imposed on this product.

Current law provides four mechanisms for addressing availability issues. First, the DOC can define and clarify the scope of an antidumping or countervailing duty proceeding during the investigation phase. This enables the DOC to exclude from coverage of any order products which are not relevant to the purpose of the petition. Second, once an antidumping or countervailing duty order is in effect, the DOC has the authority to clarify the scope of the order to exclude imported products which are not addressed or intended to be addressed in the order. Third, the DOC has the ability to undertake a changed circumstances review and revoke all or part of an order. Fourth, the ITC can find "niche" products and exclude them from an injury finding. Any product not subject to an affirmative injury finding cannot be subject to duties.

If there is concern that these mechanisms are insufficiently responsive or work too slowly, then consideration should be given to ways of streamlining the administrative process. It makes no sense, however, to superimpose yet another bureaucratic process

on the existing ones. The fact that a duty suspension would be "temporary," in contrast to the current processes which result in permanent changes in scope, would have no practical effect. As long as dumped or subsidized products can be imported duty-free, there will be no economic logic for domestic producers to enter or remain in the market. Indeed, the proposed legislation is drafted to give preference to maintaining a "temporary" suspension, once granted. The only basis for reimposing duties would be a finding by the DOC that there is "insufficient basis for continuing the suspension."

Conclusion

The United States trade laws have been carefully structured to promote free and open markets linked by vigorous and fair trade. The process by which these laws are administered is the most objective and transparent in the world. All parties are afforded access and the opportunity to present their views, and the resulting determinations are based on clear, impartial standards. H.R. 2822 would amount to a "Trade Law Suspension Act" and should be rejected. It would undermine the principles and processes of current trade laws by introducing political pressure, subjectivity and unpredictability. It would reduce our capacity to foster open markets while increasing the role of the federal bureaucracy in private business decision making. It would discourage new capital investment; limit the ability of U.S. producers to restructure to meet the changing demands of the marketplace; and, reward foreign producers who have been proven to engage in continuing unfair trade practices that are injuring U.S. industry. Any legitimate availability issues can be addressed through existing mechanisms under current law.

United States Enrichment Corporation Privatization Act

This proposal would permit the President to waive the application of the trade laws with respect to uranium purchased from the Russian Federation if he determines that doing so is required in the national security interest. This proposal, if enacted, would set a dangerous and undesirable precedent for overriding the application of our trade laws on a product-by-product, country-by-country basis. As discussed above, the U.S. unfair trade laws are critical to maintaining the world's most open market. They are the primary defense for U.S. industry against foreign predatory practices. It is inappropriate to exempt specific products or specific countries from these trade laws. Once one foreign producer receives a waiver from the laws, more and more other foreign producers and foreign governments will argue for similar treatment. Their arguments often will be presented in seemingly compelling terms -- economic hardship, foreign relations, national security and political stability are examples -- but will fundamentally be a plea for the U.S. to reward their industries engaged in unfair trade practices at the expense of U.S. industries and jobs. Therefore, we oppose waivers of the U.S. trade laws.

JOINT COMMENT OF:
American Beekeeping Federation, Inc.; American Honey Producers Association; Bicycle Manufacturers Association of America, Inc.; Coalition For Fair Atlantic Salmon Trade; Committee To Preserve American Color Television; Copper and Brass Fabricators Council; Footwear Industries of America, Inc.; Fresh Garlic Producers Association; Leather Industries of America, Inc.; Municipal Castings Fair Trade Council; National Pasta Association; Specialty Steel Industry of North America; Specialty Tubing Group; Tanners' Countervailing Duty Coalition; VEMCO Corporation; and Verson, Division of Allied Products Corporation

Before the
Subcommittee on Trade
House Ways and Means Committee

STATEMENT IN OPPOSITION TO

TEMPORARY DUTY SUSPENSION LEGISLATION (H.R. 2822)

On behalf of a broad range of domestic industries supportive of strong trade laws, we wish to express our vigorous opposition to H.R. 2822, a bill that would provide the Department of Commerce with the discretion to temporarily suspend antidumping and countervailing duties if the agency determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties "inappropriate."

This statement is submitted on behalf of the following domestic companies and industries: the American Beekeeping Federation, Inc.; American Honey Producers Association; Bicycle Manufacturers Association of America, Inc., Coalition for Fair Atlantic Salmon Trade; Committee to Preserve American Color Television; Copper & Brass Fabricators Council; Footwear Industries of America, Inc.; Fresh Garlic Producers Association; Leather Industries of America, Inc.; Municipal Castings Fair Trade Council; National Pasta Association; Specialty Steel Industry of North America; Specialty Tubing Group; Tanners' Countervailing Duty Coalition; Vemco Corporation; and Verson, Division of Allied Products Corporation.

These industries firmly believe that H.R. 2822 will create an enormous loophole in the remedies provided under the countervailing duty and antidumping statutes. Under current U.S. law, AD/CVD duties must be imposed on dumped and subsidized imports that have caused, or threatened to cause, injury to an American industry. The proposed legislation would permit importers to avoid the duties assessed after exhaustive and expensive administrative proceedings on the claim that a particular product is not available in the U.S. market.

However, contrary to the assumption underlying this legislation, the antidumping and countervailing duty laws do not create "short supply" conditions. These statutes do not impose a quota that limits the volume of imports from the country at issue; instead, a special duty imposed on dumped and subsidized goods. Because the remedy is a tariff and not a quantitative restraint, U.S. customers are not denied access to foreign goods nor are they limited in the amount of imports they can buy; they are just required to pay a fair price for them.

In addition, creation of a short supply exception jeopardizes the remedial purpose of these laws. Imports sold at unfairly low prices frequently force U.S. companies out of a particular product line. If AD/CVD duties are suspended for those products, importers that have benefitted the most from dumping and subsidization will be rewarded.

But perhaps most significantly, the short supply exception will allow unfairly low prices to continue and thereby thwart U.S. companies from renewing production in those products. If the foreign producer's price remains at the dumped or subsidized level, the marketplace will not send the proper "signals" to the U.S. manufacturer to let him know that he can be competitive on a particular product. For example, if a U.S. producer's cost for an item is $110 and a foreign producer benefitting from dumping or subsidies sells the same good in the U.S. market for $90, the U.S. company will assume that it cannot compete in that product line. But if the fair value of the import is actually $125 and AD or CVD duties are imposed to ensure that the product sells in the U.S. market at that price point, the U.S. company -- realizing that its $110 product can compete with a $125 import -- will be given a market signal to make the necessary capital investment to produce this particular product. Clearly, companies will not be willing or able to

make substantial investments in plant and equipment if imports continue to be sold at subsidized or dumped prices.

Further, enactment of this legislation will create enormous administrative difficulties. There is no question that importers will make numerous requests for duty suspension, forcing Commerce to devote substantial resources to ensuring that no U.S. company in a particular industry could -- or would -- produce the sought-after product. Nor is it clear how Commerce could be certain that it had not overlooked a potential manufacturer. If the government relies on a Federal Register notice to alert U.S. companies about a short supply request, it is unlikely that small and even medium size companies will get actual notice of the issue. As a result, Commerce staff could make a short supply finding when there might be American firms ready and willing to produce the item alleged to be unavailable.

The availability of such relief would also provide opportunities for abuse. It is not hard to imagine certain importers devising commercially unreasonable specifications in order to guarantee that no U.S. company will be found capable of producing the item. Federal bureaucrats will be faced with the impossible task of determining whether commercial specifications are reasonable. Indeed, the Department of Commerce has recently made it clear to Members of Congress that it does not want nor feel it needs the authority provided in H.R. 2822.

In addition to the substantial administrative burden that this legislation would impose on the Executive Branch, it is also important to remember that, although the United States bases its unfair trade laws on the World Trade Organization's Antidumping and Subsidies Codes, neither code requires or even envisions a short supply mechanism. Thus, there is nothing in the United States' international obligations that compels enactment of this legislation.

Further, even if such a proposal was advisable on the merits (which we do not believe), now is not the time for its consideration. A short supply amendment was hotly debated during the passage of the GATT implementing legislation in 1994 and was opposed by the Administration and soundly rejected by both the House Ways and Means Committee and the Senate Finance Committee on a bipartisan basis. It should not be reconsidered so soon after that thorough examination of this controversial issue. To the contrary, adoption of a short supply provision will require re-consideration of several issues that proponents of stronger trade laws abandoned as part of the compromises that facilitated enactment of the GATT implementing legislation.

Finally, the Subcommittee should also consider the budgetary impact of H.R. 2822. Revenues from antidumping and countervailing duties are contributed to the general treasury of the United States. In a time of budget crisis, it does not make sense for the United States to forego any of the hundreds of millions of dollars in revenues generated by the collection of AD/CVD duties.

For the reasons set forth above, the domestic industries submitting this statement strongly oppose passage of H.R. 2822. We greatly appreciate the opportunity to express our views on this important issue. Thank you.

AMERICAN FLINT GLASS WORKERS UNION, AFL-CIO

National Headquarters

Lawrence Bankowski
President

Richard G. Morgan
First Vice-President

Joe Cocchio
Second Vice-President

Robert P. Rosser
Third Vice-President

Ivan T. Uncapher
Secretary-Treasurer

L. Dale Lamb
Assistant Secretary

George M. Parker
President Emeritus

February 29, 1996

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Comments on Miscellaneous Trade Proposals - Advisory TR-17

Dear Mr. Moseley:

We write to express our strong opposition to H.R. 2822, a bill "to provide authority for the temporary suspension of antidumping and countervailing duties under limited market conditions." The nation's workers are entitled to face competition that is fair. Too many jobs have been lost because unfair trade practices have forced companies to close. We are concerned that the bill will reward dumpers who have most seriously harmed U.S. workers and their companies and will reduce the market-price correction necessary to permit companies to rehire American workers.

Our members believe that Congress should focus its attention on making conditions of fair trade easier to obtain in the United States and, once obtained, harder to evade or avoid. Nipping unfair trade practices in their inception will reduce the instances where price levels in the market become artificially low. Such actions will both reduce the situations where domestic producers have been forced to lay off workers, reduce salaries and reduce capacity - thus assuring greater local supply - and avoid purchasers perceiving artificial price advantages (those flowing from dumping or subsidies) as a "right".

If you are going to consider trade legislation in 1996, please focus on the real needs of the working men and women of the country -- prompt and effective relief. H.R. 2822 offers neither and should be opposed.

Sincerely,

Lawrence Bankowski

Lawrence Bankowski
National President

LB/ls

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February 29, 1996

The Honorable Bill Archer
Chairman
Committee on Ways and Means
U.S House of Representatives
Washington, D.C. 20515-6348

Dear Mr. Chairman:

Re: Support for H.R. 2822, the Temporary Duty Suspension Act

On behalf of the members of the American Gas Association (A.G.A.), I would like to submit this statement for the official record in support of H.R. 2822, the Temporary Duty Suspension Act.

A.G.A. is a national trade association comprised of approximately 300 natural gas distribution, transmission, gathering and marketing companies in North America, which together account for more than 90 percent of the natural gas delivered in the United States.

The Temporary Duty Suspension Act would amend the current Tariff Act of 1930 by providing the Department of Commerce the authority to temporarily suspend antidumping and/or countervailing duties for certain products that are not available in the United States. This legislation is necessary because there are no adequate mechanisms under existing law to suspend a duty when a product is not available in the United States. Domestic industries are being forced to pay the antidumping or countervailing duties on products that they cannot obtain from American manufacturers. The Department of Commerce should be given the flexibility to effectively administer American international trade policy and to protect domestic industries that must import certain products from unnecessary costs.

Under the current law, antidumping and countervailing duties are imposed on entire classes of products, which may include goods that cannot be obtained from any domestic manufacturer. The Department of Commerce can only suspend a tariff on a permanent basis after lengthy review process following a 24 month waiting period. H.R. 2822 provides the Department of Commerce a modest, yet important, addition to its authority to address unique trade problems, on a temporary and limited basis in a timely manner.

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For example, many natural gas companies require specialized steel for the construction of safe pipelines. While U.S. steel manufacturers produce some specifications that the gas industry needs, there are instances the U.S. steel industry does not produce, or is unable to produce within a reasonable time, steel that meets those specifications. Therefore, our industry must import this steel. The imported product may be subject to the antidumping or/and countervailing duties, even though the product is not available domestically. This unnecessarily increases the costs for pipeline projects and the ultimate cost of the natural gas that is transmitted to those served by the pipeline. In cases like this, the current law imposes a penalty on a domestic company, yet there is no domestic maker of that product to protect.

The purpose of our antidumping and countervailing duty laws is to protect domestic companies from unfair or subsidized foreign competition. Our trade laws are not intended to artificially raise prices of goods that domestic companies need and can not obtain in the United States. H.R. 2822 recognizes the market reality that all products are not always available in the domestic market, ultimately forcing industries to look for supplies in foreign markets. The Temporary Duty Suspension Act would only apply when there is no domestic manufacturer to be protected.

Temporary relief authority, similar to this legislation, was successfully employed in the 1980's. It is a concept that has been tested.

We urge Congress to provide the authority to enable the Department of Commerce to act quickly and fairly to correct the inequities that result when domestic manufacturers cannot provide the needs of other domestic industries.

We appreciate your support for this legislation. If you need additional information, please feel free to contact me.

Sincerely,

Mike Baly

Michael Baly III

STATEMENT ON TEMPORARY DUTY SUSPENSION BILL
(H.R.2822)
BY AMERICAN INSTITUTE FOR INTERNATIONAL STEEL
PRESIDENT HORST E. BUELTE
U.S. HOUSE OF REPRESENTATIVES WAYS & MEANS COMMITTEE
TRADE SUBCOMMITTEE PUBLIC COMMENT DEADLINE MARCH 1, 1996

The member companies of the American Institute for International Steel (AIIS) represent a very large proportion of steel imported into, and exported from, the United States. AIIS supports free trade and competition in steel trade. AIIS opposes protectionist barriers to trade, including tariffs, non-tariff barriers, and subsidies.

AIIS has previously explained in detail its opposition to the protectionist biases of the substance and procedures to antidumping laws, which have made them the weapon of choice worldwide for companies seeking to avoid competition. Such biases as applying one set of rules to calculate production costs for domestic producers, and another set of rules for imports, or "putting a thumb on the scale" by calculating foreign prices differently than import prices, are matched by the more subtle tactic of filing antidumping cases likely to be lost eventually, in order to temporarily disrupt trade. As a result, there has been such a blizzard of antidumping cases against steel imports into the United States, and steel exports from the United States, as to suggest that the primary beneficiaries of all the litigation and lobbying are steel industry lawyers.

H.R. 2822 is not a question of theology or antidumping rhetoric, but plain horse sense. If U.S. supplies are temporarily unavailable, why make U.S. manufacturers pay more than necessary to buy them from foreign producers?

A temporary duty suspension provision would alleviate the most bizarre aspect of antidumping laws -- requiring U.S. manufacturers to pay higher prices to foreign exporters in situations where there is temporarily no U.S. supply available. Since, by definition, the Commerce Department would never be permitted to suspend duties temporarily if U.S. supply was available, no U.S. manufacturer can possibly be injured by it. Provision of such authority to the Commerce Department, to be used only when needed, is so commonsensical as to cause wonder at the arguments made against it by certain special interest groups. Argument: "Temporary duty suspension would reward those pernicious foreign exporters who had completely destroyed U.S. production, by allowing the imports to escape the duty."

This issue is easy enough to resolve: Commerce would deny a temporary duty suspension ["duty suspension"] in the case of dumped products that had caused the elimination of all U.S. production.

We make this proposal knowing it will probably never need to be used. Notwithstanding the claims by the Economic

Strategy Institute (see "Don't Weaken Dumping Laws", Journal of Commerce, February 26, 1996), there has never been a case of dumping in the United States where predatory pricing has been proved. Indeed, more frequently antidumping cases are associated with illegal antitrust activities by petitioners (as with the recent guilty plea by Elkem -- a successful petitioner under the antidumping law against imports of ferrosilicon -- which has admitted to fixing the price of that product).

Argument: "The grant of temporary duty suspension will preclude U.S. production from restarting if it has temporarily stopped."

The answer is simple: Commerce would not grant a temporary duty suspension if Commerce determined that the resulting imports would preclude the restart of U.S. production.

Argument: "Commerce under existing authority can take care of the problem."

Nothing in existing law or in Commerce's proposed regulations would preclude a repeat of the almost-comic Flat Panel case. The sole U.S. producer could not supply even a small part of demand, thus forcing all of the customers offshore because there was no supply available here.

Argument: "Unlike the steel VRA's, there is never a shortage of foreign supply in an antidumping case, because the foreign exporter can simply raise its price by the amount of the antidumping duty."

That's exactly the point -- where there is no U.S. supply available temporarily, it does not make sense for the U.S. government to force U.S. manufacturers to pay more to foreigners. In any event, the Flat Panel case proved that in the real world, many foreign products in fact are not available after an antidumping order. This may be because it takes Commerce at least 1-3 years after the importation to tell the importer what the duty was. That uncertainty can make it commercially unwise to continue to import the product, no matter what the price.

Argument: "A temporary duty suspension would become a form of price controls."

The duty suspensions would be time-limited, quality-limited, and conditional on a showing that no U.S. supply would be available for that limited time period. Commerce would therefore not be in a position to use this system to control prices nationally even if it wanted to.

The companies that raise this argument most vociferously to the U.S. Congress did not utter a single objection when the European Union recently granted a temporary duty suspension on the product they make at their factories in Europe -- based on price!

Argument: "There has been no shortage of steel in the U.S."

Steel is no longer a fungible product. Many of the steel products sold today were not even produced 10 years ago.

New product development has been a major cause of specialization and trade in the global steel market. No national steel industry in the world makes every single possible type of steel. It is not rational to do so, because it could not be done economically.

Thus, while it is understandable that for reasons of administrative convenience the Commerce Department lumps all steel into a few general groups, and imposes duties on those large groups, it is virtually certain that there will be inclusion in the duties of very specific types of steel not made in the U.S. (or other countries, which is why Mexico, and Canada, for example, routinely exempt from their antidumping duties various specialized types of steel needed by their manufacturers).

STATEMENT OF AMERICAN IRON AND STEEL INSTITUTE ON BEHALF OF ITS U.S. MEMBER COMPANIES (H.R. 2822)

The American Iron and Steel Institute (AISI), on behalf of its U.S. member companies, appreciates this opportunity to provide comments on H.R. 2822, the Temporary Duty Suspension Act.

Before addressing the concept of short supply or temporary duty suspension (TDS) as applied to trade laws, we believe it is highly relevant to discuss briefly (1) the current condition of the American steel industry, (2) the market distortions that continue to plague the world steel industry, and (3) the importance and purpose of U.S. antidumping (AD) and countervailing duty (CVD) laws.

The U.S. Steel Industry: Vital, World Class, Forward-Looking

Critical to the U.S. defense and industrial base, the $45 billion-a-year American steel industry is today a textbook example of industrial revitalization. Having invested over $35 billion since 1980 in new steel plant and equipment, U.S. steel producers have: (1) more than doubled labor productivity to world-leading levels; (2) won back market share from Japan and other major foreign competitors; (3) gone head-to-head with plastics and aluminum; (4) moved into important new market niches (such as steel frames in home construction); (5) increased exports substantially; (6) emerged as a major world center of innovative steelmaking technology; (7) demonstrated a commitment to trade liberalization through support for the GATT Uruguay Round (UR) agreements and the North American Free Trade Agreement (NAFTA); and (8) along the way, become a reliable, low-cost supplier of top quality steel products to the U.S. market.

There is a mistaken notion that some trade law opponents have been propagating -- that laws against unfair trade serve the interests of uncompetitive, dinosaur industries at the expense of consumers and more competitive industries. The American steel industry in the 1990s, like the U.S. semiconductor industry one decade ago, is proof of exactly the opposite: that effective U.S. AD/CVD laws are essential to the health and viability of America's most competitive industries and the U.S. economy as a whole.

The World Steel Industry: Cartel Practices, Closed Markets, Massive Subsidies

While the U.S. steel industry has changed dramatically over the past decade, the fundamental characteristics of the world steel industry have not. Today, eight years after the first publication of the book Steel and the State (a seminal work on trade-distorting foreign government intervention in the steel sector), when U.S. steel producers look abroad, they still see:

- steel cartels, closed markets, allocations by customer and market, special pricing arrangements, and other private anti-competitive practices;
- toleration of these private anti-competitive practices by governments;
- pervasive dumping of steel by companies in violation of World Trade Organization (WTO) rules and U.S. law;
- massive government subsidies to promote employment and exports, and to keep in operation otherwise uncreditworthy companies (over $100 billion in steel subsidies between 1980 and 1992, and these subsidies continue to this day);
- maintenance of excess steelmaking capacity far beyond national requirements; and
- the export of that capacity on an unfairly traded basis.

In the 1993 flat rolled steel cases, the Department of Commerce (DOC) found weighted-average dumping and subsidy margins of 37 percent and, in the 1995 administrative reviews, the DOC found that unfair trade continues. This is why AISI's U.S. member companies insist on the need to maintain effective and WTO-consistent U.S. AD/CVD laws. It is also why we support the ongoing effort to achieve a universal, comprehensive, effective, and enforceable Multilateral Steel Agreement -- to end the cartel practices of foreign steelmakers, eliminate foreign government steel subsidies, open up world steel markets, and reduce, over time, the incentives that foreign steel producers now have to engage in dumping and maintain inefficient, excess capacity.

AD/CVD Laws: Critical to Free Trade, Jobs, and Competitiveness

The United States cannot have a competitive manufacturing base with good-paying jobs and a rising standard of living unless we maintain strong laws against unfair trade. In the past decade, advanced materials, semiconductors, and other strategic industries critical to America's long term prosperity have faced intense dumping by foreign competitors. Over the past three decades, dumped and subsidized steel imports have caused a devastating amount of damage to America's steel companies, workers, and communities. Chronic and undeterred unfair trade of the kind we have seen in steel destroys companies and jobs. It drives up the cost of capital, increases investment risk, and deters investment. If it is not offset, it can lead to disinvestment and the destruction of entire industries. In the case of steel, the issue is stark: unless we maintain the full effectiveness of U.S. AD/CVD laws, we put at risk the dramatic recovery to world-class status achieved by U.S. steel producers and workers in the last 10 years.

Effective laws against dumped and subsidized imports are a cornerstone of this nation's political and legal support for free trade and open markets. They are a vital defense against the trade-distorting practices of less efficient foreign competitors, and are necessary to ensure genuine comparative advantage. The simple fact is this: no U.S. company -- regardless of how competitive it is -- can compete effectively against foreign governments and firms whose prices are not based on market forces. Widespread recognition of this fact is why we have international rules against trade-distorting subsidies and the pernicious practice of injurious dumping -- to ensure that these unfair trade practices are not allowed to destroy otherwise competitive domestic firms.

Effective AD/CVD laws help to offset the effects of subsidies and cartel practices and closed markets (which facilitate dumping). In other words, they help to offset the market distortions in other countries by preventing foreign firms from targeting market share in U.S. industries. These laws do not limit the quantity of imports that can be sold in the U.S. market or prohibit foreign firms from selling here at prices below what U.S. producers charge. After a separate injury finding by the U.S. International Trade Commission (ITC), they merely impose an additional duty at the level ("margin") equal to the unfair advantage that the DOC has found in order to ensure that foreign prices will be based on market forces.

Unfortunately, U.S. laws against unfair trade are under renewed attack in the 104th Congress. If these attacks are allowed to succeed, U.S. competitiveness and jobs will be undermined. AISI supports continued efforts to improve the effectiveness of international disciplines and U.S. laws to redress unfair trade. Along with U.S. semiconductor producers and others in the Committee to Support U.S. Trade Laws, we vigorously oppose AD/CVD amendments or rulemaking that would have the effect of weakening these laws.

Proponents of amendments that would undermine America's AD/CVD laws often talk about the need to restore "balance" to U.S. trade laws. AISI totally rejects the notion that U.S. laws against unfair trade are either biased against respondents or inconsistent with the new WTO rules. Congress needs to know that, as a result of dozens of significant UR-conforming changes, U.S. AD/CVD laws will be weaker than they were before the Round. In the future, U.S. cases will (1) be harder to bring, (2) be harder to win, (3) provide less relief, (4) provide it for a shorter period of time, and (5) cost more.

With respect to any trade legislation in 1996, AISI shares the DOC's position that both the U.S. agencies that administer our AD/CVD laws and the industries that use them need time to digest and adjust to what the UR and the U.S. implementing bill have done. Accordingly, we have repeatedly urged the 104th Congress not to add AD/CVD law amendments to trade legislation this year -- and, especially, not to adopt additional trade law weakening provisions. The biggest threat at present to the continued effectiveness of U.S. AD/CVD laws is H.R. 2822 -- the short supply or temporary duty suspension proposal introduced in the House in December 1995.

Temporary Duty Suspension Act: Unwise, Unnecessary, Fundamental Change

AISI and the American steel-producing community stand as one in strong opposition to H.R. 2822. As at least 16 House Ways and Means Committee members and leading DOC officials have made clear, H.R. 2822 would strike a blow at the heart of this nation's vital defenses against unfair trade and the U.S. companies, jobs, and communities that depend upon them.

Recently, the new DOC Under Secretary for International Trade-designate, Stuart Eizenstat, stated that H.R. 2822 would be a "mistake" that would "distort" U.S. trade law by "rewarding the very organizations and entities that are the most effective in dumping." We agree. By allowing foreign producers to continue to sell their products in the U.S. market at dumped and subsidized prices, (1) H.R. 2822 would encourage the foreign market distortions (cartel practices, closed markets, dumping, and subsidies) that have caused the injury to U.S. producers, and (2) it would discourage the injured U.S. producers from investing in new facilities or reinvesting in the products that are subject to the AD/CVD order. This would be particularly harmful to U.S. steel companies and workers, and is at odds with the very purpose of AD/CVD laws.

Perhaps H.R. 2822 should be renamed "The Trade Law Suspension Act." It would fundamentally alter -- and seriously undermine -- U.S. AD/CVD laws. The thing that sets these laws apart from other trade statutes is that they provide full due process rights to all parties, and U.S. AD/CVD laws are arguably the least politicized, arbitrary and discretionary -- and the most transparent, clear and objective -- laws in determining whether relief should be imposed. H.R. 2822 would change that.

This is not a "narrowly drawn" exemption from U.S. trade law enforcement. H.R. 2822 would effectively turn the clock back to the 1970s when enforcement of U.S. AD/CVD laws was discretionary, not mandatory. It would grant broad and unwanted discretion to the DOC to suspend duties against unfairly and injuriously traded imports "in whole or in part" when "prevailing market conditions related to availability" make imposition of duties "inappropriate." It would offer no standards for making such a determination, nor any judicial review. It would allow for an unlimited number of one-year "temporary" duty suspensions, and allow AD/CV duties to be reimposed only if there is "insufficient basis for continuing the suspension."

H.R. 2822 would open a huge loophole in U.S. AD/CVD enforcement, and inject a large amount of politics and uncertainty into the process. In so doing, it would only further discourage U.S. producers from filing expensive and time-consuming cases against injurious foreign unfair trade. We would hope that inhibiting the use of trade laws is not the real purpose of this legislation.

At a time of fewer resources at the DOC, U.S. AD/CVD laws would become more complex, burdensome, prone to abuse, and costly to administer. H.R. 2822 would permit the DOC to overturn the market analysis of the ITC. It would subject DOC officials to intense lobbying pressure that, in effect, would allow them to pick "winners" and "losers" in deciding when to apply -- or not -- additional duties against dumped and subsidized imports. It would encourage purchasers to "cook" their specifications in an effort to evade U.S. trade law enforcement. And it would drive up costs substantially for all parties -- the DOC, petitioners, and respondents alike. In the words of Congressmen Amo Houghton (R-NY) and Sander Levin (D-MI), one cannot compare H.R. 2822 to the European Union's (EU's) short supply provision, because "antidumping and countervailing duty proceedings in the U.S., unlike those in the EU, are rule-driven, on-the-record, non-political actions that are subject to thorough review."

The Trade Subcommittee knows well that both the House Ways and Means Committee and the Senate Finance Committee soundly rejected an even less sweeping "short supply" provision in 1994 when they considered the GATT UR implementing bill. Now, in 1996, before the ink has had a chance to dry on the DOC's UR rulemaking, we have

before us once again a bill -- H.R. 2822 -- that would upset the delicate balance of interests that the UR Statement of Administrative Action represents.

In addition, H.R. 2822 is totally unnecessary.

- AD/CVD laws, unlike the steel Voluntary Restraint Arrangements, do not limit imports. Because AD/CVD laws do not impose quotas and merely counter the margin of unfair trading, they cannot cause "shortages."

- The DOC already has sufficient authority, under the "scope" provisions of AD/CVD law, to exclude unintended products from both the investigation and the order. It also has adequate authority, under the "changed circumstances" provision, to deal with those rare cases where an order covers a product that no U.S. producer makes or has any intention of making. The DOC is now using this authority -- with U.S. petitioner support -- in two separate cases to exclude certain cobalt plate and steel rail products from orders.

- The ITC has the authority to find "niche" products that are not made in the U.S. and to exclude them from injury findings (and, therefore, orders).

- AISI and its U.S. member companies support the DOC's making expedited scope and changed circumstances rulings to exclude products from AD/CVD orders where the petitioner has no concerns. If the process could be further streamlined -- without harming U.S. trade law enforcement -- this, too, would have our support.

What we cannot support -- and now must confront -- are the frequently exaggerated and unsubstantiated assertions that there are "dire shortages" of specific products in the U.S. market due to AD/CVD orders. Once again, the fundamental point is that AD/CVD orders cannot cause shortages. In the case of steel, we would urge members of Congress not to accept at face value the allegations of shortages made by TDS proponents.

- Contrary to what some of our foreign competitors have suggested, international steel trade is not marked by "specialization" in which only foreign steel companies are capable of making a whole range of products. From a technical, cost and quality standpoint, U.S. steel companies can supply almost every steel product.

- In those rare cases where a steel product covered by an order is truly not available from a U.S. company, steel users can pay the AD/CV duty on the product subject to the order, purchase the steel product from a foreign company not subject to the order, or go to the petitioner and ask that it work with them to get the product excluded from the order.

- U.S. steel company petitioners have encouraged U.S. steel users to consult with them at the earliest possible stage of AD/CVD cases to determine which products, if any, should be excluded from investigations or orders because they are not made in the United States and U.S. producers have no interest in producing them in the foreseeable future. U.S. steel industry petitioners voluntarily supported such exclusions in the 1993 flat rolled cases.

- It is also generally not in the interest of U.S. steel company petitioners to include products not made in the United States in the scope of their AD/CVD cases, because it only hurts them at the ITC on the injury side.

*

In sum, H.R. 2822 is not what it purports to be. By undermining U.S. AD/CVD laws and their enforcement, this bill would cause severe harm not only to the U.S. steel industry but to America's trade policy, national security, international competitiveness, standard of living, jobs, communities, and economy as a whole -- including consumers.

United States Enrichment Corporation Privatization Act

AISI also opposes the proposal that would permit the President, in the interest of "national security," to waive the application of trade laws with respect to uranium purchased from the Russian Federation. These laws are designed to be applied on a product-by-product, country-by-country basis, and to exempt specific products or countries would set a dangerous and unwise precedent.

Our main concern is that a specific exemption of this kind would only encourage other foreign governments and producers to argue for similar waivers in the future. Next time, instead of presenting arguments about national security related to nuclear material, the rationale may be that an exemption is warranted due to concerns about the general state of U.S. relations with a foreign country, be it political instability or economic hardship.

The key point is this: there should be no waivers from the full enforcement of U.S. laws against unfair trade. These laws and their effective enforcement are themselves critical to U.S. industries, jobs -- and national security.

AMERICAN TEXTILE MANUFACTURERS INSTITUTE
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February 28, 1996

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

These comments are submitted by the American Textile Manufacturers Institute (ATMI), the national association of the domestic textile industry on behalf of its member companies in response to the Committee's request for comments regarding H.R. 2822.

ATMI strongly opposes this proposed legislation as it would seriously undermine United States anti-dumping and countervailing duty laws. These laws, which have been carefully constructed and enacted by the Congress after much consideration, are designed to remedy situations in which American producers and workers face unfair, predatory and illegal foreign competition. To weaken our laws, as this bill will surely do, would inflict grave economic harm on domestic producers and workers.

The concept of "prevailing market conditions" embodied in H.R. 2822 is too imprecise to serve a useful function in the application of the relevant laws. It invites--nearly mandates--subjective judgements, which ought to be avioded in the application of the law.

For the reasons cited above, ATMI requests that H.R. 2822 not be enacted.

Sincerely,

Carlos Moore

Carlos Moore
Executive Vice President

BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
US HOUSE OF REPRESENTATIVES

COMMENTS ON BEHALF OF THE AMERICAN WIRE PRODUCERS ASSOCIATION CONCERNING THE TEMPORARY DUTY SUSPENSION ACT (HR 2822)

MARCH 1, 1996

The American Wire Producers Association (AWPA) respectfully submits the following comments in support of the Temporary Duty Suspension Act (HR 2822).

American Wire Producers Association

The AWPA represents a significant and dynamic part of the American steel industry. AWPA active members are located in the United States and manufacture all types of steel wire and wire products. These products include barbed wire, wire strand, mesh and fencing products, nails, springs and wire garment hangers. AWPA members purchase carbon, stainless and other alloy steel wire rod from domestic and foreign sources, and they process or "draw" the wire rod into wire which may then be further processed into wire products. Major consumers of wire and wire products include the automotive, agricultural and construction industries.

The AWPA also includes virtually all of the US and Canadian manufacturers of steel wire rod – the wire industry's basic raw material – as well as producers of wire and wire products in Canada and Mexico.

The 89 members of the AWPA operate 220 plants in 35 states, and they employ over 60,000 dedicated and productive American workers. These companies represent 70 to 80 percent of all US manufacturers of wire and wire products. It is estimated that the total annual shipments by AWPA members exceed $15 billion.

The member companies of the AWPA are part of a diverse and dynamic US steel industry. With the companies in our sister associations of steel mini-mills, pipe producers, cold finished bar manufacturers, and others, we have changed the face of the American steel industry. The steel industry long ago ceased to be a monolithic group of a handful of integrated steel producers. Instead, the steel industry today is a vibrant, diverse and innovative contributor to economic growth and prosperity in the United States. The old image of "Big Steel" has been superseded by a mosaic of efficient, energetic and state-of-the-art companies which can successfully meet the challenge of global competition.

Support of the Temporary Duty Suspension Act

The AWPA endorses the Temporary Duty Suspension Act (HR 2822) and respectfully urges the members of this Committee to support its passage. The Act will remedy the unintended effect of the antidumping and countervailing duty laws that prevents the import of products that are not available from domestic sources. Under the present law, there is no procedure that permits the temporary suspension of antidumping or countervailing duties for narrowly defined products that cannot be supplied by the domestic industry.

The AWPA is a very active participant in the Temporary Duty Suspension Group, which is a coalition of many industries that support the need for this important legislation. Under separate cover from the coalition, are comments which thoroughly describe the intentions of HR 2822 and address the misunderstandings and concerns expressed by opponents of this legislation. We have not reiterated those points in these comments, but rather have focused on direct wire industry experiences that effectively illustrate the need for HR 2822 and have provided examples for the illustration of the ability to administer this provision, should it become part of US trade law. The AWPA fully supports and endorses the comments of the Temporary Duty Suspension Group.

Antidumping and Countervailing Duty Laws

HR 2822 is not an attempt to weaken the antidumping and countervailing duty laws. On the contrary, the AWPA has long supported the rigorous enforcement of US trade laws. Its members have used these laws in order to respond to unfairly traded or subsidized imports which have caused serious economic harm to the wire and wire products industry. Moreover, AWPA members source raw material primarily from US manufacturers of steel wire rod. The AWPA active members have worked closely with the domestic rod industry – now composed entirely of world-class and efficient mini-mills – to develop and expand the availability of American-made wire rod.

Further, the Temporary Duty Suspension Act will not obstruct the effective and rigorous administration of the current antidumping and countervailing duty laws. The Act can be invoked only if the specific product is not available from US producers. There is no injury to these domestic suppliers if they cannot provide the needed product to their customers in the US market. Therefore, the Temporary Duty Suspension Act does not weaken or undermine the remedies which are available under current antidumping and countervailing duty laws.

US Wire Industry Experience illustrating the Necessity for Temporary Duty Suspension Procedure

The member companies of the AWPA which manufacture wire and wire products have had considerable experience with the unintended effect of antidumping and countervailing duty proceedings on the availability of certain types of wire rod. During the antidumping investigations of carbon steel wire rod in 1993–94, the imposition of preliminary dumping duties prevented US manufacturers of steel wire and wire products from obtaining certain types of wire rod that were not available from domestic producers. In addition, the US market experienced severe shortages of even basic types of wire rod. Rod producers put their customers on allocation, cancelled orders and postponed deliveries. The unavailability of wire rod threatened severe economic harm to a vigorous and profitable US wire industry, and it encouraged foreign competitors to target the US market for steel wire and wire products. Although the US International Trade Commission eventually made findings of no injury and terminated most of these investigations, this experience demonstrates the necessity for a mechanism to provide temporary relief when domestic consuming industries cannot obtain essential raw materials from sources in the United States.

Further, the petitioners in these carbon steel rod investigations amended the scope of their complaints to exclude some types of wire rod which were not available from producers in the United States. However, they only did so while pressuring those wire manufacturers, whose future depended upon the availability of such wire rod, to agree not to oppose the antidumping cases in general. This underscores the need for the Temporary Duty Suspension Act, which would give an independent and impartial governmental agency – in this case, the US Department of Commerce – the authority to make such decisions. The future of the domestic industry should not be held hostage to the tactical objectives of petitioners in antidumping and countervailing duty cases. Surely, it is in the commercial interest of all parties – including petitioners – that decisions relating to the domestic availability of needed products be made on the basis of the facts and in accordance with the established administrative procedures. In fact, the largest US rod producer, who was a petitioner in this case, has expressed support for an amendment to the antidumping and countervailing duty laws which would provide authority for the Department of Commerce to grant 'short supply' authorization when a product is not produced domestically."

Precedent for and Administrablitiy of a Temporary Duty Suspension Procedure

The members of the AWPA have also had experience with the administration of a program which successfully dealt with the non-availability of certain types of steel products from domestic producers. During the steel Voluntary Restraint Agreement program, stainless steel wire drawers were able to obtain special licenses from the US Department of Commerce for rod products which were not available from domestic mills. For six consecutive calendar quarters, AWPA members requested and obtained special licenses to import specific grades of stainless steel wire rod which were not available from domestic producers. In fact, domestic producers of stainless steel wire rod certified to the US Department of Commerce that such rod was not available in the US market, in sufficient quantities to meet domestic demand.

Further, it was the experience of the AWPA that the US Department of Commerce was able to make these determinations, in each instance, in a prompt and fair manner without placing an undue burden on its resources.

Conclusion

The AWPA respectfully requests the members of this Committee to support the Temporary Duty Suspension Act. This Act will remedy an unintended but harmful effect of the antidumping and countervailing duty laws which prevents the importation of products which are not otherwise available from domestic producers. The Act will not weaken the antidumping and countervailing duty laws or cause harm to the US industries that seek relief from unfairly traded and subsidized imports. Rather, the Act provides a limited procedure which can be invoked only in those exceptional circumstances when a specific product is not available from domestic producers. In this way, the Act enables downstream manufacturers to obtain needed raw materials so that they can maintain their operations and compete successfully with foreign suppliers of the downstream product.

BERG STEEL PIPE CORP.
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CARL G. SEIGLER
Vice President - Administration

COMMENTS ON H.R. 2822
SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS
MARCH 1, 1996

These comments are submitted on behalf of Berg Steel Pipe Corp. ("Berg") of Panama City, Florida. Berg employs over 200 workers in its Panama City, Florida plant for the production of large diameter steel pipe for oil and gas pipelines and offshore platforms.

Berg strongly supports the temporary duty suspension ("TDS") provision introduced by Congressman Crane on December 21, 1995 (H.R. 2822). Berg is committed to an effective antidumping and countervailing duty law. In fact, Berg has been a petitioner in trade cases. Berg also believes that the trade laws should be administered to promote the competitiveness of all U. S. industries.

H.R. 2822 is consistent with these principles. This bill would allow the Department of Commerce to suspend antidumping and countervailing duties temporarily, and for a limited quantity, on products needed by American industry when they are not available from U. S. producers. This provision could prove vital to the health and competitive position of U.S. companies that rely on imported components and raw materials, as well as their workers and communities. It would not hamper the effectiveness of U. S. trade laws.

Under current law, antidumping and countervailing duties are imposed on a broad range of covered products; in deciding what products are covered, the Commerce Department does not consider whether specific products are made in the U.S. It is obvious to us that imposing dumping and countervailing duties on products that cannot be obtained in the U. S. hurts U.S. manufacturers who must compete globally, but does not help any domestic industry.

A TDS provision is critical to Berg's competitiveness in the U.S. and in export markets. The primary raw material for the large diameter steel pipe that Berg produces is steel plate. Usually, Berg buys the plate it needs to make pipe from domestic suppliers. Berg is one of the largest purchasers of steel plate from domestic producers.

Sometimes, however, Berg's customers specify requirements that domestic producers of plate cannot meet. When this happens, only imported plate can be used. Much of the imported plate that Berg needs when it can't use domestic plate is subject to antidumping and countervailing duties. Berg must pay antidumping and countervailing duties on imported plate even if it is not available in the United States. These additional antidumping and countervailing duties often make the difference between keeping or losing business to imported pipe. When Berg cannot obtain plate, the sale is lost to a foreign pipe producer. Berg is injured.

In the 1980's and early 1900's steel VRAs took the place of antidumping and countervailing duty cases. The VRAs limited shipments of steel, including steel plate, to the United States, but they included a "short supply" mechanism.

The steel short supply procedure provided relief from the steel VRA quotas if a particular product was not available domestically. Under this mechanism, the Commerce Department had the authority to permit the importation of additional quantities of a product that was in short supply above the aggregate quantitative limitations under the VRAs. Application for such relief could be filed by a U.S. producer or consumer of the product; a U.S. importer/distributor of the product; or a foreign producer of the product. The Department processed 65 steel short supply applications from 1989-1991. Without the steel short supply procedure, the steel VRAs would have injured Berg severely.

As it happened, Berg was a frequent user of the short supply mechanism, especially after 1989 legislative changes to the program that made it more "user-friendly." Without short supply, our operations in Florida would have been severely hampered.

After the VRAs expired in 1992, the U.S. steel producers filed trade cases against imports of steel plate, among other products. At the outset of the plate investigations, Berg identified the problems associated with supply and successfully convinced petitioners to agree to remove "X-70" plate from the scope of the investigation. While removal of X-70 plate solved part of Berg's problem, it did not solve all of it. Berg still has difficulty obtaining certain other types of plate domestically, such as plate that is ultrasonically tested on the rolling mill and extra-wide plate.

Furthermore, the permanent removal of X-70 plate is not an ideal solution. It removes X-70 plate from the protection of the trade laws. Our U.S. suppliers should be encouraged to broaden the range of their available products. Berg does not believe that permanent exclusion of products from the protection of the trade laws is consistent with this objective.

The bill we support authorizes temporary removal of products from the scope of an order. This provides the domestic industry with an incentive to reenter the market. Once the domestic industry begins to manufacture a particular product, the relief afforded by the bill is terminated and the protections of the antidumping duty order are fully reinstated.

Permanent relief removes domestic producers' incentive to meet domestic demand. By contrast, the temporary relief provided by H.R. 2822 will actually encourage the domestic industry to develop new products since it will enable U.S. downstream producers to maintain their business in the United States until the U.S. industry begins to manufacture the needed input product. This will ensure that there will be U.S. customers for new products produced by the domestic industry.

The temporary duty suspension provision will not undermine the effectiveness of the antidumping law or the protection that this law affords to U.S. producers and workers in any way. It is not designed to alter the substance of the law, or to reduce the scope of orders. The remedy would only apply in situations where products cannot be obtained in the U.S. - situations in which no U.S. producer benefits from the protection of antidumping laws and downstream U.S. producers and their suppliers would be harmed.

The current failure of U.S. antidumping and countervailing duty laws to consider domestic availability of products subject to these proceedings continues to hamper the competitiveness of numerous U. S. companies, including Berg. The proposed legislation gives the Department of Commerce the flexibility and control necessary to address changing market conditions.

We strongly urge the Committee to approve this important legislation at the earliest opportunity.

bomont industries

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March 1, 1996

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: TR17--Request for Comments on Miscellaneous Trade Proposals

Dear Mr. Moseley:

In response to your request, we write to you to express our strong opposition to the proposal to allow temporary suspensions of anti-dumping duties. We understand that HR 2822 would allow anti-dumping duties obtained by any domestic industry to be suspended for up to one year if "prevailing market conditions" rendered the imposition of duties "inappropriate."

Bomont Industries, since the 1930's, has supplied the business printer industry with impression fabrics. Our business was built on growth, expansion, and change. Small and medium-sized industries such as Bomont are the innovative engines of our domestic economy. For these industries to be able to reap the fruit of their risk-taking, they must have access to effective anti-dumping remedies.

The proposed revision to the anti-dumping law, however, is unnecessary and potentially expensive. The proposed revision is based on two assumptions: that the imposition of anti-dumping duties is associated with shortages which negatively affect user industries and that low dumping prices are beneficial to user industries. Both assumptions are erroneous.

Anti-dumping duties merely restore fair pricing; they do not limit the availability of any covered product. Indeed, the over-all effect of the duties, in the medium to long-term, is to preserve multiplicity of sources. This potentially <u>enhances</u> availability and reduces shortages.

The lower prices which temporarily may be available to user industries for imported supplies, if anti-dumping duties are not imposed or enforced, are an illusory benefit at best; dumped prices do not reflect true competitive advantages, they reflect only the foreign producer's greater ability and willingness, with respect to a particular product or product line, to exchange financial loss for increased volume and market share. The incentives available to companies to enter new markets and develop new products are always based on market signals. Dumped prices, however, produce false market signals and therefore distort investment decisions.

While unnecessary and based on erroneous assumptions, the addition of a temporary duty suspension provision clearly adds to the already considerable cost of anti-dumping proceedings, making the remedy less accessible to small and medium-sized enterprises. Finally, in some cases it may also hold a significant potential of politicizing the investigatory process, subjecting small to medium producers to the greater political leverage of large purchasers.

For those reasons Bomont opposes such a revision to the anti-dumping law.

Sincerely,

BOMONT INDUSTRIES

Joseph A. Sullivan
President/CEO

JAS:bk

cc: Congressman Dick Zimmer

CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION

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March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

On behalf of the California Independent Petroleum Association (CIPA) please accept these comments in support of **H.R. 2822**, the Temporary Duty Suspension Act. CIPA is a non profit trade association representing approximately 550 companies involved in the production of crude oil and natural gas in California.

CIPA supports **H.R. 2822** because it vests the Department of Commerce with the authority to temporarily suspend imposition of antidumping or countervailing duties on limited quantities of a particular product needed by an American industry when a domestic user is unable to obtain that product from U.S. producers. It is critically important to note that **H.R. 2822** would address only those situations where the particular domestic product is only temporarily unavailable. The bill enables the Department to suspend duties temporarily until the domestic industry is able to produce that particular product.

Let it be noted that CIPA is a strong supporter of the Department of Commerce's efforts to enforce antidumping and countervailing duty laws that have been implemented by Congress. CIPA believes that vigorous enforcement of these laws protects domestic jobs and industries and discourages foreign entities from dumping foreign made products on the U.S. market.

In the past 12 months several actions taken by Congress and the Administration have given hope to California oil and gas producers that significant new exploration and drilling activities may take place. The first is the repeal of the ban on exporting Alaskan North Slope (ANS) crude. For years the California oil market has been flooded by ANS crude resulting in considerably lower prices and demand for California's heavy crude. CIPA has advocated that lifting the ban on ANS will result in increased production in Alaska and California as ANS crude finds its natural market and is no longer forced onto the west coast. The second action enacted by the Administration that will stimulate production in California is heavy oil royalty relief for heavy oil producers; primarily located in California. California oil producers, after years of depressed oil prices, shrinking employment, and declining production are very excited at the possibilities resulting from the above actions.

Despite these very positive actions by the Congress and the Administration, CIPA is very concerned that the availability of needed steel products, essential for exploration and drilling activities will be hampered due to the short supply of the needed products from domestic producers. It is for that very reason that CIPA asks for the immediate approval of **H.R. 2822** so that, in special circumstances, the Department of Commerce can act to ensure that needed products are available to domestic users until the product can be produced by domestic producers.

H.R. 2822 does not require the Department of Commerce to take any action with regards to suspending antidumping or countervailing duties, it merely provides the Department the authority to provide relief in appropriate circumstances. Furthermore, **H.R. 2822** would only apply in those situations where no U.S. producer benefits from the protection of antidumping laws and downstream U.S. producers and their suppliers would be harmed because the product cannot be obtained in the United States.

California's oil and gas production industry has been in decline for several years, despite the fact that there are more than 3 billion barrels of proven oil reserves in the state still to be recovered. It is CIPA's believe that Congress and the Administration have a responsibility to ensure that the domestic oil and gas industry remains strong and viable. If the window of opportunity that has been opened due to the actions taken by Congress and the Administration is closed because of lack of adequate supplies, than the above actions will have been for naught. CIPA respectfully requests your Committee to take swift action on the approval of **H.R. 2822**.

Sincerely,

John M. Donovan

John M. Donovan
Director, Environmental & Regulatory Affairs

Canberra Industries, Inc. 800 Research Parkway, Meriden, CT 06450 Telephone 203-238-2351 FAX 203-235-1347

CANBERRA

March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: H.R. 2822

Dear Mr. Moseley:

In reference to Congressman Crane's bill on short supply, I would like to emphasize our support. Canberra was involved with an importer charged with antidumping duties, which were passed on to us. Since no domestic producer could supply the steel we required, we were forced to pay higher costs and pass the increase along to our customers.

Please take a moment to read our story, as a short supply provision would have prevented almost 3 years of increased cost and frustration.

Canberra is the leading manufacturer of radiation detection and analysis equipment. It was established in 1965 with a handful of people and has grown over the past 30 years, now employing 350 people at its manufacturing facility in Meriden, CT, and 1000 people worldwide. In addition to the growth in people, the company continues to grow and adapt to the changing world. Thirty years ago Canberra developed radiation detection instruments to detect radioactivity in the human body, as well as in the environment. Today, Canberra continues to improve on whole body counting systems and is developing new technologies to assist the U.S. Government in lowering waste disposal costs for decontamination and decommissioning projects across the United States.

Canberra purchases low radioactive background steel from Canada, as it is not available in the U.S. This specialized steel is used as background shielding in Canberra systems to provide accurate analysis of radioactivity. Due to manufacturing processes in the U.S., domestic steel has traces of Cobalt-60, which would be recorded as part of the sample. This would lead to higher disposal costs for radioactive waste, or could falsely imply that a person had been exposed to radioactive material.

Canberra's largest domestic customer is the U.S. Department of Energy. Other customers include nuclear power plants, research labs, state departments of health, universities, hospitals, the International Atomic Energy Agency (IAEA) and Euratom.

In August of 1993, our steel supplier in Canada, Sidbec-Docso, fell under an "all others category" of an antidumping order, at 61.95%. This cost was passed on by Sidbec-Dosco to Canberra. Initially, Canberra could not offset the antidumping penalty, as there were contracts already in process. However, prices were increased during 1994 to reflect the additional cost of steel. Internationally this put Canberra at a disadvantage in a very competitive market. Domestically, this increased the cost to the U.S. Department of Energy, and ultimately the U.S. tax payer.

nce Canberra is a manufacturer purchasing 99% of materials domestically, we never ran into this uation before and did not know where to turn for help. Local Department of Commerce and ongressional offices in Connecticut were not able to assist. Only after a casual conversation th someone were we even aware that there was a "Scope Exclusion Request". We contacted r supplier in Canada, Sidbec-Dosco, who was not interested in submitting the request as it ould be too costly for the amount of steel we purchase (we are their only purchaser in the U.S.). erefore, we took it upon ourselves to do the leg work to file the request, with Sidbec-Dosco's pport.

took us until January of 1995 to submit the Scope Exclusion Request (legal counsel was not ed, as it would have been too costly for Canberra as well). In November 1995, the Department Commerce advised us that our case could not be exempted under a Scope Exclusion Request, wever a Changed Circumstances Request might be a viable solution. The Changed rcumstances Request was submitted in November and this week, February 28, 1996, the emption was published in the Federal Register.

summary, we strongly support the short supply bill. The current route to relief is not timely d certainly not easy to know about unless you are a very large corporation with a legal staff. If were not for the support of the Connecticut Congressional Delegation, Canberra would not ve the relief awarded this week. The laws of international trade should support all workers in nerica.

ank you for your time.

ncerely,

chele Parisi
anager
der Administration

CO·STEEL INC.

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W. J. Shields
Chairman and
Chief Executive Officer

December 18, 1995

The Honorable Dick Zimmer
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Zimmer:

Re: Proposed Short Supply or Temporary Duty Suspension Legislation

On behalf of Co-Steel Raritan of Perth Amboy, New Jersey, I am writing to express our opposition to proposed legislation to amend the dumping and countervailing duty laws to add a short supply or temporary duty suspension provision. We urge you to oppose such an amendment during consideration in the Ways and Means Committee.

Co-Steel Raritan is the largest U.S. producer of carbon steel wire rod. In our facility in Perth Amboy, we produce 900,000 tons of wire rod annually with 500 workers. We are among the most efficient producers in the world, producing a ton of wire rod with less than 1.2 manhours of labor. Although our mill is only 15 years old, we are currently investing $70 million to replace the furnace, increase capacity of the rolling mill, and upgrade the computer controls and reheat furnace. We also are an aggressive user of the trade laws, and have petitioned the U.S. government when we have encountered unfair foreign competition that is dumped or subsidized. Strong U.S. trade laws have helped us keep the mill running at 100 percent plus capacity and thereby maintain jobs in New Jersey.

The short supply proposals are attempts by importers to enact a mechanism that would permit unfairly traded imports to enter the United States without being subject to dumping or subsidy duties—even after a protracted investigation by two separate federal agencies has confirmed the presence of unfair practices and injury.

Supporters of this legislation claim that it is necessary to allow products in short supply to enter the country. This is not true. The dumping law and subsidy laws ensure that imports are priced fairly; they do not limit the quantity of imports that may enter the United States.

Furthermore, the Department of Commerce already has the tools to exclude products from the scope of a duty order. In fact, in the most recent set of cases brought by Co-Steel Raritan and other wire rod producers, we agreed to exclude two types of wire rod that we could not produce at that time in sufficient quantities for the U.S. market. Commerce obliged, allowing purchasers of these niche products to obtain them from their foreign suppliers without fear of dumping duties.

Additionally, under existing law, purchasers who feel they cannot obtain needed products from domestic producers have a forum at the ITC during the injury phase of the investigation. If they can show that U.S. producers cannot make certain types of products, the ITC has discretion to find that there is no injury as to that specific product or as to all merchandise under investigation. Of course, on the other side, petitioners can argue that unfairly priced imports have prevented them from selling certain products and the ITC can find that those imports have injured the domestic industry.

In summary, I believe there are adequate procedures within both the Department of Commerce and the ITC phases of an investigation to get products excluded if they are not available from domestic sources.

Thank you for your consideration.

Sincerely,

W. J. Shields

WJS:el

COMMENTS OF THE COALITION FOR FAIR LUMBER IMPORTS ON THE TEMPORARY DUTY SUSPENSION ACT

SUBMITTED TO THE SUBCOMMITTEE ON TRADE COMMITTEE ON WAYS AND MEANS

MARCH 1, 1996

The Coalition for Fair Lumber Imports ("Coalition") appreciates this opportunity to comment on the Temporary Duty Suspension Act (H.R. 2822). The Coalition represents small and large lumber producers across the United States, including: The Independent Forest Products Association, the Intermountain Forest Industries Association, the Maine Forest Products Council, the Massachusetts Wood Products Association, the Northeastern Lumber Manufacturers Association, the Southeastern Lumber Manufacturers Association, the Southern Forest Products Association, the Timber Products Manufacturers, the Western Wood Products Association, the Forest Farmers Association, the Washington Farm Forestry Association, and the Arkansas, California, Georgia, Louisiana, Mississippi, South Carolina, Texas and Virginia Forestry Associations.

The Coalition has been engaged for over a decade in efforts to ensure that subsidized imports of Canadian softwood lumber do not cause injury to the U.S. lumber industry. These efforts most recently have focused on Consultations with the Canadian Government, which in February resulted in an agreement in principle whereby the key Canadian provinces have committed to steps designed to offset the injury caused the U.S. industry. However, prior to these Consultations, the Coalition was active in litigating several countervailing duty actions before the Department of Commerce (DOC) and the U.S. International Trade Commission (ITC) against imports of subsidized Canadian lumber. The following comments are based on the Coalition's experience in these cases before the DOC and the ITC.

H.R. 2822 would substantially alter U.S. trade laws against foreign dumping and subsidies, and undermine their effectiveness as a remedy against these unfair trade practices. It is a bill that would only defend, foster and succor unfair trade. Under our unfair trade laws, antidumping and countervailing duties are imposed on unfairly traded imports in an amount equal to the level of dumping or subsidy determined to exist by the DOC after a lengthy and thorough investigation, as well as a determination of material injury by the ITC. This system ensures that the trade laws act as a remedy to offset the amount of unfair advantage provided to the unfairly traded imports.

The discretion provided to the DOC and the ITC in making these determinations has been carefully limited by the Congress to ensure that these determinations are made on the basis of the facts presented, consistent with statutory standards, rather than on political pressures. With the notable exception of cases involving goods from Canada or Mexico, both U.S. petitioning industries and foreign respondents also have extensive rights to appeal DOC and ITC determinations for review by a specialized federal court operating under Article III of the Constitution, the Court of International Trade.

H.R. 2822 would fundamentally change the trade laws by granting broad discretion to the DOC -- discretion the DOC does not want -- regarding when antidumping and countervailing duties would be applied. It gives the DOC authority to suspend imposition of antidumping or countervailing duties whenever the DOC determines that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." It provides no standards as to when market conditions might justify such a determination, nor does it appear to provide for judicial review.

Adoption of such a duty suspension provision could seriously undermine U.S. trade laws. The trade laws simply offset the amount of unfair benefit provided by dumping or subsidies. They guarantee that the subject imports are priced fairly, but do not limit the quantity of those imports which may enter the United States. A temporary duty suspension provision is therefore unnecessary to ensure an adequate supply of an imported product. Rather, such a provision would simply reward those foreign companies that have successfully

driven U.S. producers out of business through unfair trade practices by denying U.S. companies the relief needed to invest in new plant and equipment in order to compete and could potentially discourage reentry of U.S. companies.

A temporary duty suspension provision would also politicize the application of U.S. trade remedy laws. H.R. 2822 establishes no standard regarding when prevailing market conditions make imposition of antidumping or countervailing duties inappropriate. The question of when it is appropriate to provide relief to a particular industry is left to the DOC to decide, with no system of checks and balances for ensuring that decisions are not made for purely political purposes.

Providing the DOC with this discretionary authority to suspend antidumping and countervailing duties would also interfere with the role of the ITC. In order to obtain relief under the trade laws, a U.S. industry must demonstrate to the ITC that dumped or subsidized imports are causing injury to that industry. In order to make such a determination, the ITC must find that the imports compete with the products made by the domestic industry. If the imports and domestic goods do not compete, no injury to the U.S. industry would be found. To give the DOC authority to suspend duties on products found by the ITC to compete with domestic goods in effect would permit the DOC to overrule the ITC.

A temporary duty suspension mechanism would be prone to abuse. Proponents of the legislation argue that it would be used only where U.S. companies require products with unique specifications that no U.S. products meet. However, permitting such a loophole would simply encourage purchasers of dumped or subsidized goods to draft their specifications so narrowly that only the unfairly traded goods meet the specifications.

Finally, a temporary duty suspension mechanism is unnecessary to accomplish its stated objective. Any real instances of no domestic supply can be remedied under existing law through changes in the scope of an antidumping or countervailing duty order. Where there is no U.S. production of a product that can compete with the imported good subject to the antidumping or countervailing duty order, the order should be amended to exclude that product.

Based on the above, the Coalition urges the Subcommittee to reject H.R. 2822. The DOC does not want nor need this authority.

Cold Finished Steel Bar Institute
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Telephone 202/508-1030

February 29, 1996

Mr. Phillip D. Mosley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Mosley:

I am writing as Chairman of Government Relations of the Cold Finished Steel Bar Institute in response to Mr. Crane's request for written comments on H.R. 2822. Our Institute strongly opposes that proposal. Our reasons are as follows:

1. The bill would permit the Commerce Department to suspend antidumping or countervailing duties when "prevailing market conditions" related to the "availability" of the product subject to an order make those duties "inappropriate". This type of vague and ambiguous language flies in the face of a long tradition (since 1974) under which antidumping and countervailing duty cases are considered by the Commerce Department and the International Trade Commission in acting in a quasi-judicial capacity. These cases are decided under specific regulations by officials who are insulated from policy makers within the Executive Branch and the Congress.

H.R. 2822 would permit those quasi-judicial proceedings to be overturned on the basis of subjective concepts that have no fixed meaning and which could be given as many different interpretations as the number of officials considering them. The potential for the exercise of political influence in these cases is so obvious it hardly needs to be mentioned. In short, the proposal would overturn the non-political approach to trade cases that has been essential to our trade laws for over 20 years.

2. The imposition of countervailing and antidumping duties is based upon a long-standing, internationally agreed belief that a country's workers and industries should not have to tolerate unfair trade practices. In virtually every case that those duties are imposed, those consumers that have benefited from dumped and subsidized imports will experience higher costs. Nonetheless, the Congress has long believed that this price is reasonable in order to nullify injury to domestic workers and industries from unfairly traded imports.

The proposal would turn this approach on its head. In cases where unfair trade practices have driven American producers from the marketplace or curbed their ability to supply that market, the foreign countries and producers responsible for those injuries would be forgiven the penalty duties. Again, this would represent a change going to the heart of our laws.

3. According to the experts in the Commerce Department, administration of the provisions in H.R. 2822 would be a nightmare. Particularly at a time when budget restraints are already curbing the ability of the Department to handle trade cases in an efficient manner, this added burden is wholly unjustifiable.

The proposal would also substantially increase the costs of prosecuting and maintaining unfair trade practice cases, since petitioners would be required to reargue their cases every time a domestic user of the product concerned alleged it was in short supply. Of course, proving a negative is always harder and more expensive than simply making an allegation. Again, it would be unconscionable to add to the already high cost of bringing trade cases, particularly for small businesses.

We ask that the Committee reject this proposal.

Sincerely yours,

Paul J. Darling, II

STATEMENT

of the

COMMITTEE OF DOMESTIC STEEL WIRE ROPE AND SPECIALTY CABLE MANUFACTURERS

before the

SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES

I. INTRODUCTORY STATEMENT

This statement is submitted on behalf of the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (Committee) in opposition to H.R. 2822 ("Temporary Duty Suspension Act"), a bill to provide the Department of Commerce with the authority to suspend the imposition of antidumping and/or countervailing duties if it determines that prevailing market conditions related to the availability of the subject product make imposition of such duties inappropriate.

The Committee is composed of most major U.S. manufacturers of steel wire rope, accounting for a substantial majority of U.S. wire rope production.[1]

The Committee submits that H.R. 2822, if passed into law, will undermine the effectiveness of this nation's unfair trade laws, and will adversely affect the U.S. steel wire rope industry. Moreover, the Committee submits that this bill does not fill a legitimate need since the Department of Commerce already has statutory authority to amend or otherwise modify the terms of antidumping and countervailing duty orders in appropriate circumstances and with proper safeguards.

II. DESCRIPTION OF THE PRODUCT

Steel wire rope is a machine which is used for applications which require force to be transmitted, such as for earth-moving and materials-handling equipment including clamshells, cranes, bulldozers, mining machines, hoists and conveyors; for elevators; for logging; for marine applications; for aircraft control cables and for fish net trawling. Steel wire rope is also the only acceptable product which may be used by the oil field industry for drilling and well servicing.

Imports of stainless steel wire rope are classified under heading 7312.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS), while imports of carbon steel wire rope are classified under heading 7312.10.90, HTSUS. Additionally, imports of stainless steel and carbon steel wire rope "fitted with fittings" are classified under headings 7312.10.50 and 7312.10.70, HTSUS, respectively.

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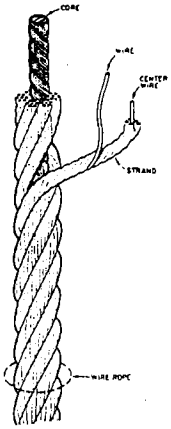
[1] The Committee consists of the following member-companies: Bridon American Corporation, Wilkes-Barre, PA; Broderick and Bascom Company, Kenosha, WI; Macwhyte Company, Kenosha, WI; Paulsen Wire Rope Corporation, Sunbury, PA; The Rochester Corporation, Culpeper, VA; Union Wire Rope, Kansas City, MO; and Wire Rope Corporation of America, Incorporated, St. Joseph, MO.

All wire ropes consist of three basic components:

1) a core;
2) wires that form a strand; and
3) strands laid helically around a core.

These components are illustrated below:



Generally, wire rope production requires hot rolled, high carbon steel wire rod or wire drawn from such rod.[2] Strands consist of individual wires, with the number of wires per strand ranging upward from seven. The individual wires are formed around a center, which is usually a single wire, so that all wires in a strand can move in unison to distribute load and bending stresses. Physical characteristics of the finished wire rope, such as flexibility, fatigue resistance and abrasion resistance, are directly affected by the design of the strands, i.e., the number of wires in the strand and the manner in which these wires are arranged within the strand.

The core is the foundation of a wire rope around which the main strands are laid, or "closed." The core keeps the strands properly spaced within the design standards and length of lay. It is made of materials such as steel (typically an independent wire rope core or IWRC), or hard vegetable or synthetic fiber, which will provide proper support for the strands under normal bending or loading conditions.

While all wire ropes are characterized by the three fundamental components, specific wire ropes can be distinguished and described by diameter, the number and construction of strands, the grade and type of steel, the number and arrangement of wires in the strands, and the kind of core.

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[2] Certain U.S. companies, including member-companies of the Committee, manufacture stainless steel wire rope as well as carbon steel wire rope. However, the volume of stainless steel wire rope production is minimal relative to the volume of carbon steel wire rope production. The manufacturing processes for the two products are very similar, with the principal difference being the raw material used, i.e., carbon steel wire rod or wires as opposed to stainless steel wire rod or wires.

III. THE COMMITTEE HAS MAINTAINED A LONG STANDING STRUGGLE AGAINST THE PERNICIOUS EFFECTS OF UNFAIRLY TRADED WIRE ROPE IMPORTS

Apparent domestic consumption of steel wire rope in 1995 stood at approximately 194,000 net tons.[3] Domestically-manufactured wire rope accounts for approximately 57 percent of this total, with imports accounting for the remaining 43 percent. This is a significant change from the late 1970's, when imports accounted for little more than 20 percent of the U.S. market. Indeed, the insidious incursion of imports - often based on unfair trade practices - has been the signal characteristic of the domestic steel wire rope market over the last twenty years.[4]

During this time, the Committee has found it necessary on several occasions to turn to this nation's antidumping and/or countervailing duty laws in order to preserve the industry's viability and competitiveness. As a result of a series of administrative actions, antidumping duty orders are currently in place on wire rope imports Korea, Mexico and Japan, and a countervailing duty order is currently in place on wire rope imports from Thailand. Indeed, in its most recent investigation of the effect of unfairly traded imports on the U.S. wire rope industry, the U.S. International Trade Commission found that "highly fungible subject imports consistently and significantly undersold the domestic product. As a result, we find sufficient evidence that the subject imports' gain in domestic market share can be attributed, in large part, to the low prices of the unfairly traded imports."[5]

In addition, the Department of Commerce had issued final determinations that several other countries, including Argentina, India, the PRC, Taiwan and Thailand, were selling wire rope in the U.S. market at "dumped" prices. Although these investigations did not result in the imposition of antidumping duty orders, they demonstrated the prevalence of foreign suppliers' widespread resort to unfair trade practices in order to capture U.S. market share.

But for the Committee's vigilance in pursuing available remedies under this country's trade laws, the U.S. steel wire rope industry may not have survived. It is this reality which compels the Committee's strong opposition to the "short supply" loophole created by H.R. 2822.

IV. CURRENT LAW ALREADY PROVIDES FOR THE AUTHORITY CONFERRED BY THE TEMPORARY DUTY SUSPENSION ACT

The authority which is provided to the Department of Commerce by H.R. 2822 is unnecessary since current law already contains sufficient mechanisms with which to modify the terms of a dumping or CVD order in light of "prevailing market conditions." Specifically, section 781 of the Tariff Act of 1930, as amended, 19 U.S.C. §1677j (1995), provides the Department with statutory authority to conduct "scope" inquiries to determine whether a particular product is covered by a particular antidumping or countervailing duty order. Under this provision, the Department

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[3] Apparent domestic consumption is the sum of U.S. producers' domestic shipments and imports of steel wire rope.

[4] South Korea has historically been the principal foreign supplier of steel wire rope to the U.S. market. Other significant foreign suppliers include: the People's Republic of China; Canada; Malaysia; Turkey; the United Kingdom; Thailand; Germany; Taiwan; Spain; Ukraine; India; and Japan.

[5] *Steel Wire Rope From the Republic of Korea and Mexico*, Inv. Nos. 731-TA-546 and 547 (Final), USITC Pub. 2613 at 28 (March 1993).

has the authority to determine that products that have substantially different characteristics or uses, or products with unique characteristics, from those explicitly covered by an order are outside the scope of that order.

The Committee notes that the recently published proposed regulations of the Department of Commerce for antidumping and countervailing duty investigations provides wide latitude for the Department to conduct "scope" inquiries in instances where a proper claim of "short supply' is made. The proposed regulations also detail strict deadlines for the conduct of such investigations.[6]

Additionally, section 751 of the Tariff Act of 1930, as amended, 19 U.S.C. §1675(b) (1995), provides the Department with the statutory authority to conduct "changed circumstances" reviews which could lead to the elimination of an antidumping duty order in whole or in part if circumstances warrant. Again, the Department's proposed regulations provide it with wide latitude to conduct "changed circumstances" reviews in instances where a proper claim of "short supply" is made, and detail strict deadlines for the conduct of such reviews.[7]

At a time when the Congress continues to consider legislative designs to cut back the Commerce Department's functions and capability, it would be imprudent policy to further encumber the Department with an additional and unnecessary administrative burden, such as would be imposed under H.R. 2822.

V. THE TEMPORARY DUTY SUSPENSION ACT PROVIDES THE DEPARTMENT OF COMMERCE WITH UNWARRANTED DISCRETIONARY AUTHORITY

Pursuant to Section 2 of H.R. 2822, the Department of Commerce may temporarily suspend the imposition of antidumping or countervailing duties in whole or in part if the Department "determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." The legislation does not define the term "prevailing market conditions," nor does it detail the factors which the Department should consider in making a determination whether such market conditions exist.

In the absence of such standards, the Department is conferred excessive discretion in its decision making process, allowing for unintended and arbitrary determinations. This would undermine the appropriate administration of this nation's unfair trade laws. The Department would be burdened with unjustified pressures to allow a suspension of duties in inappropriate circumstances. The Committee submits that fair and just administration of these laws requires proper safeguards against such efforts. H.R. 2822 would give rise to just the opposite result.

Furthermore, H.R. 2822 would allow the Department to consider improper elements, e.g., price, when making "short supply" determinations. The Committee strongly believes that the fact that an imported product is not available at an "acceptable" price cannot provide a justifiable basis for a determination that such product is in short supply. If price were allowed to become a factor in short supply determinations, the very purpose of the unfair trade laws - i.e., application of duties in an amount equal to the margin of unfair trading - would collapse.

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[6] 61 Fed. Reg. 7308, 7374-76 (1996) (to be codified at 19 CFR §351.225) (proposed February 27, 1996).

[7] 61 Fed. Reg. 7308, 7368 (1996) (to be codified at 19 CFR §351.216 (proposed February 27, 1996).

VI. CONCLUSION

The Committee opposes H.R. 2822. As an industry which has suffered the injurious impact of unfair imports, we believe that any measure which unreasonably weakens the protections afforded by this nation's unfair trade laws constitutes imprudent and unwise policy. H.R. 2822, by its very terms, must inevitably erode these protections to the detriment and potential injury of U.S. industries, such as the domestic steel wire rope industry.

We appreciate the opportunity to submit these comments on H.R. 2822, and thank the Subcommittee for its consideration of these views.

Respectfully submitted,

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Specialty Cable Manufacturers

JOINT COMMENT OF:
THE COMMITTEE ON PIPE AND TUBE IMPORTS AND
WEIRTON STEEL CORPORATION

for the House Committee on Ways and Means Subcommittee on Trade

The Temporary Duty Suspension Act, H.R. 2822

March 1, 1996

Submitted by Schagrin Associates

These written comments are filed by Schagrin Associates, a legal and lobbying firm located in Washington D C on behalf of some of our clients These clients include, the Committee on Pipe and Tube Imports (CPTI) an industry trade association comprised of 26 domestic producers of steel pipe and tube. The members of the CPTI account for the majority of pipe and tube production in the United States and are located in eighteen states In addition, these comments also express the views of Weirton Steel Corporation, an employee owned U S producer of flat rolled steel products located in Weirton, West Virginia

The utilization of the U S trade laws is and has been an important vehicle for the domestic pipe and tube industry Over the past 12 years, these companies have used the U S unfair trade laws and recognize first hand how effective and useful the law is in re-establishing a level playing field. The industry has filed over 75 cases during this period which have challenged unfair trade practices of foreign competitors The imposition of unfair trade duties has enabled this industry, whose very existence was threatened when imports reached 56% market share in 1984, to reclaim market share and establish it as the most competitive in the world As a result, domestic pipe and tube producers continue to make capital improvements to plants, discover new technologies, create new products and have stabilized their workforce

As the nation's seventh largest integrated producer of steel products, Weirton Steel Corporation has also benefitted from its industry's use of the trade laws Committed to competing in the global market, Weirton invested over $500 million in its plant in the past six years and now produces more steel with a workforce that has been reduced by almost half Weirton is a world technological leader in developing steel products for the packaging industry

Opposition to H.R. 2822

The **Temporary Duty Suspension Act, H.R. 2822** introduced by Congressman Phil Crane, Chairman of the Trade Subcommittee would provide the Department of Commerce with broad discretion to suspend antidumping and countervailing duties for up to one year if it determines that the prevailing market conditions related to the availability of the product in the U.S. make the imposition of such duties inappropriate.

Based on the provisions of H R. 2822, the clients which we represent oppose this legislation and agree that: 1) current U.S. trade laws do not restrict importation like a quota program, but merely remedy dumping and subsidy practices through the imposition of duties; 2) current law provides certain remedies; 3) this proposal would be burdensome for the Commerce Department and the parties and 4) purchasers complaints about product shortages are usually veiled complaints about price In essence, we argue that this type of temporary duty suspension would seriously undermine the U S trade laws and therefore, find this legislation inappropriate and unacceptable. The salient points are the following:

Unfair Trade Duties do not Create Shortages

Unfair trade duties do not create lack of availability in the market. Antidumping and countervailing duties provide for the collection of a duty at the U.S. port of entry of an amount that represents the difference between foreign market value and U.S. value, or the amount of foreign government subsidization. No quantitative restriction is applied. The foreign producer and their U.S. importer can ensure that no duties are liquidated by adjusting home market and/or U.S. pricing. It may also repay government subsidies. Offsetting unfairly traded imports often allows domestic producers to increase prices, reopen facilities, expand capacity, and reinvest in R&D and technology.

Authority exists under Current U.S. trade laws to prevent no supply situations

Very often products which are not produced in the United States are excluded from the scope by the petitioners. For example, in 1994 cases on OCTG products the industry excluded from the scope OCTG with a 10.5 % or more chromium content because they were not produced in the U.S. Similarly, in 1992 cases on plate and certain grades of plate used for large diameter line pipe were excluded because they were not produced in the U.S. In addition, there are provisions under *current law* that allow for a party to request exclusion from an antidumping or countervailing duty order. In this instance, the party can petition for a change in scope review or a changed circumstance review with the Commerce Department. This is a common practice and was most recently enacted in November 1995 by the Commerce Department on certain cobalt plate products.

Burden on the Commerce Department and Effect on U.S. Industries

In instances when importers file under this proposed law for a temporary suspension of duties, the burden will be placed on the Commerce Department and the domestic industry. Under H.R. 2822, the Department will be required to evaluate the petition by accepting new factual information and conducting hearings. This will increase the already extremely expensive costs of pursuing relief under the present unfair trade laws. Furthermore, these requirements will place an unnecessary strain on an already weakened Commerce Department that is operating under limited resources. **Adding new responsibilities to the Department appears to contradict the Congressional directive on downsizing the government.**

The Energy Industry has not been Adversely Affected by U.S. Producers Exercising Legal Rights

The CPTI is aware that a number of those supporting the bill are members of the energy industry. Pipe and tube producers, like all smart producers, put a great deal of emphasis on good customer relationships and on providing quality, service and competitive prices to customers. However, it is important to set the record straight in the energy area.

First, it is impossible that there are any shortages of large diameter line pipe for energy pipelines in the United States. There have been no unfair trade orders on imports of large diameter line pipe since 1985. The few domestic producers who continue to exist are dependent on export orders for their continued viability. Second, to the knowledge of CPTI members there are no shortages of drill pipe. In fact, there evidently has been an extension of lead times for finished drill pipe, but this is because of reduced U.S. capacity of producers of tool joints. Third, there are no shortages of any of the non-high chromium OCTG used for drilling in Alaska or in deep water wells in the Gulf of Mexico. U.S. producers and finishers can and do supply products for these drilling environments. Therefore, the CPTI is hopeful that its energy industry customers are satisfied with the quality, availability and pricing of U.S.- produced products. Needless to say, it would be a tremendous financial burden on the Davids of the energy tubular products industry to have to battle it out with the Goliath energy companies and their political supporters at the Commerce Department over temporary duty suspension applications.

In sum, this temporary duty suspension legislation would effectively weaken the U.S. trade laws. This legislation would result in the potential weakening of the U.S. manufacturing sector who rely on the strong and effective enforcement of trade laws. Instead of adopting this provision, proponents of a short or no supply or temporary duty suspension provision should direct their efforts to the current laws and work with the Commerce Department and the International Trade Commission to remedy the situation.

In conclusion, this or any form of H.R. 2822 should be rejected by the Committee and the Congress. During Congressional debate on the Uruguay Round Act in 1994, the Ways and Means and Senate Finance Committees rejected a similar proposal.

Without effective trade laws, U.S. industries and their workers will be threatened by the unfair trading practices of foreign competitors. The trade laws as amended by the Uruguay Round Act should be kept in place and not weakened to benefit those who are enriched by purchasing unfairly traded imports.

We therefore oppose H.R. 2822 and thank you for allowing us this opportunity to provide comments on this legislation.

Before the
Subcommittee on Trade
House Ways and Means Committee

STATEMENT IN OPPOSITION TO

TEMPORARY DUTY SUSPENSION
LEGISLATION (H.R. 2822)

SUBMITTED ON BEHALF OF

COMPACT
COMMITTEE TO PRESERVE
AMERICAN COLOR TELEVISION

A Coalition of American Labor and Industry to Promote Fair International Trade

INTRODUCTION:

This statement presents the views of the Committee to Preserve American Color Television ("COMPACT") regarding H.R.2822, the Temporary Duty Suspension Act. COMPACT is a coalition of labor organizations and firms in the U.S. color television industry, representing over 15,000 workers.

COMPACT opposes H.R.2822 because it will seriously undermine U.S. trade laws. By suspending the antidumping and countervailing duties imposed against unfairly traded imports, this bill will put in jeopardy the necessary relief from unfair trade that domestic industries have fought hard to obtain, and would reward those foreign companies that have used dumping tactics to drive U.S. producers out of business.

As the history of the U.S. color television industry shows, dumping has caused the loss of thousands of jobs and an entire segment of the domestic industry. In fact, there are no longer any wholly-owned U.S. color television set manufacturers left in this country. H.R.2822 would deny the remaining producers in the industry the level playing field needed to invest in new domestic plant and equipment in order to continue to compete, and would cause the further loss of U.S. manufacturing jobs. H.R.2822 should be defeated this year, just as a similar amendment was defeated in 1994.

BACKGROUND ON COMPACT:

COMPACT was formed in 1976 to support a petition for import relief submitted to the U.S. International Trade Commission pursuant to Section 201 of the Trade Act of 1974. Since its founding, COMPACT and its members have participated in trade policy activities of interest to the domestic color television industry and its workers, including antidumping proceedings covering color television receivers from Japan, Korea and Taiwan and color television picture tubes from Japan, Korea, Singapore and Canada. COMPACT's Board of Directors include:

Industrial Union Department, AFL-CIO
International Brotherhood of Electrical Workers
International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO
United Electrical Workers of America, Independent
Techneglas, Inc.
Corning-Asahi Video Products

The labor organizations which are members of COMPACT represent approximately 15,000 U.S. production workers engaged in the manufacture of color picture tubes and finished color television receivers for the principal manufacturers of televisions in this country, including, among others, Philips Consumer Electronics Company, a division of Philips Electronics North America Corp., Thomson Consumer Electronics, Inc. and Zenith Electronics Corp. These unions also represent production workers who produce articles for incorporation into finished color television receivers, including cabinets, electronic components and subassemblies and glass parts for color picture tubes.

The products of concern to COMPACT are: (1) color television receivers ("CTVs"), currently classified under subheading 8528.10 of the Harmonized Tariff Schedule of the United States ("HTSUS"); (2) color television picture tubes ("CPTs"), classified under subheading 8540.11, HTSUS; and (3) glass used in the production of CPTs, classified under subheading 7011.20, HTSUS.

History of the Industry:

COMPACT's members have had lengthy experience in seeking relief from unfairly traded goods under the antidumping law. Over the past twenty years, we've witnessed the constant erosion of production base, from 26 U.S.-wholly-owned firms to none. And, over the course of two decades of decline, the U.S. International Trade Commission ("USITC") has found five times that the industry has been injured by unfair trade.

The history is startling. In the 1960's and 70's, the production of color television receivers was seen as a high technology industry to which many Americans looked to provide the jobs of the future. U.S. companies created the television – the basic technological process for manufacturing the glass envelope was invented by Corning; and the picture tube was invented by RCA. Given that the tube is the most technically complex part of a television, the U.S. industry believed that this world-class product would do very well domestically and overseas.

Although the U.S. industry grew rapidly, it was soon subject to dumping from Japanese firms. In fact, the history of this industry tells a devastating story of powerful multinational electronic giants from the Far East who were determined to dominate the U.S. market – the largest and most open market in the world for color televisions and display devices. Because the Japanese market was effectively closed to foreign goods and investment, U.S. producers could not export to Japan, but were forced to license their technology to Japanese companies if they wanted to participate in the Japanese market. With the benefit of hindsight, it is clear to see that it was Japan's systematic plan to promote its consumer electronics industry abroad through dumping, while protecting its industry at home through closed markets.

The inability of U.S. trade policy to deal effectively with this Japanese strategy undoubtedly emboldened producers from Korea and Taiwan to

emulate Japan's tactics. A Japanese television antidumping order was entered in 1971, while orders against dumped color televisions from Korea and Taiwan were entered in 1984. Antidumping orders covering CPTs from Japan, Korea, Singapore and Canada (Mitsubishi) were entered in 1988. The U.S. industry sought and won relief against unfair trade practices several times throughout that period, but thousands of U.S. manufacturing jobs were lost in the process.

H.R.2822 will endanger U.S. investment the next generation of TV:

Although there are only a few domestic suppliers to the television industry left, these firms are healthy – and on the threshold of a new era brought on by the advent of advanced television ("ATV"), high definition television ("HDTV"), and other formats of digital television. The migration to larger and higher resolution screen sizes for HDTV is placing huge pressures on CPT producers as well as on producers of glass parts for CPTs. Capacity at both the tube and glass levels of production is currently strained to the limits. Hundreds of millions of dollars in new capacity will need to be added over the next few years. In fact, money is already being spent for expansion in glass and tube production to meet industry needs. Thousands of new jobs could be created and protected. This investment could be delayed or stopped, however, if foreign companies are allowed to dump into the U.S. market with impunity.

Glass and tube production is now the anchor that holds CTV production in North America. The assembly of CTV sets is not capital-intensive and can easily migrate to other locations in pursuit of cheap labor or the abundant supply of cheap components. Unless new investments in tube and glass facilities are made, the long-term viability of the American color television industry and the jobs it creates remain in doubt. Fair trade is critical to the decision of these producers to make the necessary commitment of capital to continue this industry.

Given the enormous commercial stakes associated with ATV, there is no reason to expect that any Asian government-business team now involved in the development of ATV will not resume their dumping tactics. The history of dumping in the television industry combined with the threat of H.R.2822, give little comfort to producers who are considering investing hundreds of millions of dollars in the next generation of color picture tubes and associated glassware nor for American workers whose jobs are vulnerable to unfairly priced imports.

To allow market signals to drive the industry, the antidumping orders must be maintained. The effect of H.R.2822 is the opposite – foreign dumpers will be encouraged to resume dumping. COMPACT believes that this might prove the proverbial "straw that breaks the camel's back." At this critical juncture in the history of our domestic industry, we need to discourage injurious pricing and to encourage continued investment in the U.S.

H.R.2822 would be disastrous for the domestic television industry:

- H.R.2822 would subject the domestic CTV industry to dumping again at a time when the domestic industry is beginning to finance the development of advanced television equipment technologies, specifically ATV. ATV requires a long-term vision and investment . It will only be a relatively small high-end segment of the existing color television market for the next several years, while conventional color televisions will continue to dominate the market. The competitive position of the conventional color television industry and their suppliers in the U.S. will, therefore, be one of the largest determinants of the prospects for meaningful participation in ATV. For this reason, the maintenance of existing duties on CTVs and CPTs becomes critical. Unless domestic producers are permitted to earn a fair return on present sales, they will be unable to generate the financial resources required for long-term participation in the evolving industry.

- The notion that shortages of products under an antidumping order will arise to the detriment of U.S. consumers is a basic misconception. Even in the unlikely event that U.S. domestic industry might temporarily be unable to supply a given product to a customer, imports covered by an anti-dumping order are free to enter the U.S market, while foreign producers continue to pay any antidumping duties necessary to offset injurious pricing. The antidumping law does not limit the volume of imports that may enter the U.S., as a quota, or voluntary restraint agreement does.

- A temporary duty suspension mechanism would be prone to abuse. Proponents of a temporary duty suspension provision argue that it would be used only where U.S. entities require products they can't obtain in the U.S.. But what is "short supply" in the context of COMPACT-initiated orders? For example, if phosphor, a critical element in the manufacture of CPTs were in short supply, would the duties on CPTs be suspended? What if there were a shortage of glass for CPTs – would the duties on CTVs be suspended? High-tech industries experience shortages in raw materials from time to time which have nothing to do with current orders on the product or any relevant up-stream product. Also, foreign suppliers could manipulate our market, withholding products now supplied under antidumping orders and thereby inducing "shortages". H.R. 2822 establishes no objective standards by which to identify when a short-supply situation arises, or subsequently is corrected. Under these circumstances, administration of a short-supply provision would be unavoidably arbitrary and a bureaucratic nightmare, diverting precious resources from enforcement of the antidumping law.

- It is <u>not</u> possible to "temporarily" remove or reduce duties without <u>encouraging</u> foreign producers to continue dumping. Simply put, the purpose of foreign dumping is to drive U.S-owned domestic firms out of business. Any resulting "shortage" in supply is a **direct** result of U.S.-owned factories closing as a result of foreign dumping. In fact, we would predict that some of the companies found guilty of dumping and thus subject to an anti-dumping order, would be the very companies

helping to petition for duty suspension if this bill is enacted. The perverse effect of H.R. 2822 would be to reward those foreign dumpers that have driven U.S. producers out of business.

Conclusion:

U.S. trade laws against dumping have saved thousands of well-paying U.S. manufacturing jobs since they were established more than seventy years ago. The loophole proposed by H.R. 2822 would pull the rug out from under many industries at a time when they are poised for revival. The foreign dumpers that almost obliterated the U.S.-owned domestic color television industry, and many like it, through injurious dumping are the only winners if H.R.2822 is enacted.

STATEMENT OF CONSUMERS FOR WORLD TRADE ON THE TEMPORARY SUSPENSION OF ANTIDUMPING AND COUNTERVAILING DUTIES IN SHORT-SUPPLY SITUATIONS (H.R. 2822)

Consumers for World Trade (CWT) is a national, non-profit, non-partisan organization, established in 1978, concerned with the economic interest of consumers in international trade policy and with enhancing consumer awareness of the benefits of international trade. We are submitting this statement in response to Chairman Philip M. Crane's request for comments on H.R. 2822: to provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year if it determines that prevailing market conditions relating to the availability of the product in the United States make imposition of such duties inappropriate.

CWT strongly supports this short/no supply provision. Antidumping laws, as currently applied, affect consumers in the same manner as blatantly protectionist tariff and non-tariff barriers to trade. They discourage imports, limit choice in the marketplace and artificially inflate prices of both foreign and domestic products. Although lack of transparency makes it difficult to calculate the cost to consumers of any one dumping action, it is clear that this cost is substantial as antidumping measures constitute, in effect, a form of legalized price fixing.

Indeed, Gary Hufbauer and Kim Elliott of the Institute for International Economics, in a 1994 study "Measuring the Cost of Protectionism" have come up with a conservative figure which does not include steel cases and deals only with 119 of the 192 non-steel antidumping orders in effect at the end of 1991. If these antidumping duties were eliminated, there would be an estimated consumer gain of $2.6 billion. The authors point out that this figure understates the impact on consumer welfare for two reasons: often, the threat of a petition alone may be enough to make foreign producers raise prices and domestic producers follow suit. Or, governments might negotiate a political solution - as happened with steel and semiconductors in the 1980s and Canadian Potash in 1993. The solution is usually a carving up of the market and subsequent high prices for everyone.

A 1995 study by the International Trade Commission (ITC) reached conclusions similar to Hufbauer's. The study indicated that the cost to the national economy - including consumers at the retail level and downstream consumers - was substantially larger than the benefits to the petitioning industry. It placed the net cost to the economy at $1.59 billion. The study also estimated that, without AD/CVD orders, the domestic industries would have lost between $320 million and $109 billion, but the rest of the economy would have gained up to $2.94 billion.

It could indeed be concluded from these two studies that today's dumping is less trade distorting or harmful to the economy than the measures applied against it.

Obviously it would be in the interest of consumers to see the antidumping statute eliminated. Since this is highly unlikely, however, the second-best solution would be the adoption of much needed reforms.

Short supply consideration is one such reform. The application of antidumping duties on products which are not available from domestic producers or in short supply makes little sense. When this situation occurs, American retail-level consumers are hit by both a quota measure and a tariff. Industrial consumers (such as steel users) are made less competitive in the global market place as they face higher costs for component parts. A supply provision temporarily exempting short supply or non-available products from AD/CVD duties would be a step forward in alleviating the negative impact of the statute.

For HR 2822 to be adopted, and eventually other necessary reforms as well, there needs to be recognition by the Congress and the Administration that antidumping laws, unlike antitrust laws, protect the competitor not competition, thereby harming all consumers. No national trade law should be set up deliberately to ignore the broader public interest.

For all of these reasons, Consumers for World Trade urges the adoption of H.R. 2822.

STATEMENT
ON BEHALF OF THE COPPER & BRASS FABRICATORS COUNCIL, INC.

BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT IN OPPOSITION TO
TEMPORARY DUTY SUSPENSION ACT (H.R.2822)

March 1, 1996

This statement is submitted on behalf of the members of the Copper and Brass Fabricators Council, Inc. (the Council), and its 22 member companies. (A membership list is attached for your information.) The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more that 90 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

Since 1985, the Council and its member companies have brought a series of antidumping duty (AD) and countervailing duty (CVD) cases before the Department of Commerce (the Department) and the International Trade Commission. These proceedings have thus far resulted in the issuance of eleven AD orders and three CVD orders against imports of brass sheet and strip and of low-fuming brazing rod from a total of eleven countries. Council members have thus relied upon the AD/CD laws to counter surges of unfairly priced, injurious imports.

If enacted, H.R.2822, The Temporary Duty Suspension Act, would severely undermine the effectiveness of U.S. AD/CVD laws. A provision very similar to H.R.2822 was considered and rejected by both Houses of Congress and opposed by the Administration in 1994, during the passage of Uruguay Round implementing legislation. The resulting legislation was a balance of several views especially with respect to the AD/CVD laws. It is not time to rewrite the AD/CVD laws, particularly before the laws amended pursuant to the Uruguay Round have had a chance to be tested and before the Department has issued its final AD/CVD regulations.

The Department already has sufficient discretion in existing law to deal with those rare cases where an AD/CVD order covers a product that no U.S. producer makes or has any intention of making. Giving the Department the discretion to suspend duties would inevitably politicize a process that Congress has worked hard to make as transparent and objective as possible. The Department has said repeatedly that it does not want this discretion and again strongly opposes this legislation. Aside from politicizing the process, the Department has expressed concerns about the burden that administration of such a provision would place on its already strained resources from the unrestricted submission of duty suspension petitions.

The United States structures its unfair trade laws in accordance with its obligations under the World Trade Organization (WTO). The WTO does not require a short supply mechanism, such as that proposed in H.R.2822, for member countries. U.S. AD/CVD laws must remain as strong, accessible and predictable for U.S. companies as our international obligations permit. Congress must not create a loophole in those laws giving importers increased and discretionary access to products which have been found to be unfairly traded and injurious to American manufacturers. Permitting such access would result in a significant weakening of the overall U.S. industrial base, an outcome the U.S. Congress clearly does not want to promote.

Respectfully submitted,

Joseph L. Mayer
Mi-Yong Kim

Counsel to the Copper & Brass
Fabricators Council, Inc.

COPPER & BRASS FABRICATORS COUNCIL, INC.
MEMBERSHIP LIST
March 1, 1996

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COMMENTS OF THE ENERGY INDUSTRY GROUP ON H.R. 2822 SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS

March 1, 1996

The Energy Industry Group supports HR 2822 in the effort to provide for fair treatment of all U.S. industry segments through the administration of our country's antidumping and countervailing duty laws. We fully support the application of these laws in specific situations where U.S. made products face unfair competition from foreign made goods that are priced below production cost, sometimes because of foreign government subsidies. We do insist, however, that when a product not available from U.S. sources is needed, the supply of that product should not be impeded or penalized economically through inclusion in a generally applied categorical definition. When this injurious remedy is imposed, many U.S. industry segments are harmed without any compensating benefit to any other industry segment. This is harmful to domestic competition as well as detrimental to U.S. competitiveness in world trade. The additional cost of duties paid must ultimately be absorbed by the consumer. This injury is manifested in unnecessarily higher prices of goods and services or more innocuously in projects not undertaken or wells not drilled.

For example, the interstate pipeline systems must be able to depend on a consistent reliable supply of large diameter high grade pipe in order to maintain and expand the availability of energy to American industry and consumers. Situations that would disrupt the supply of pipe, and ultimately energy delivery, should not be sustained unnecessarily by government.

Domestic production of large diameter pipe is concentrated in only four manufacturers, two of which produce their own steel plate (the raw material for production of pipe). The other two pipe producers must obtain plate from the two integrated producers or from foreign sources, a situation that puts the nonintegrated producers at a severe disadvantage when plate supplies are tight.

Moreover, some sizes and grades of plate are not produced in the United Sates and must be obtained abroad. When plate is covered generally by antidumping and countervailing duties orders, even supplies of specific kinds of plate not made in the U.S. are penalized by government unless relief can be provided in these special circumstances. This penalty is passed to consumers without benefit to any industry segment.

There are similar examples of potential shortages involving drill pipe and production tubing, as well as similar situations affecting other industry groups.

It is the position of the Energy Industry Group that when it is necessary for the government to protect U.S. industry from unfair foreign competition, it is also necessary that the government have the flexibility and sensitivity to see that domestic competition is maintained and that downstream industries and consumers are not unduly injured by the process.

Respectfully Submitted

THE ENERGY INDUSTRY GROUP

THE ENERGY INDUSTRY GROUP

American Gas Association

Amoco Corporation

Columbia Gas Association Inc.

El Paso Natural Gas Company

Enron Corp.

International Association of Drilling Contractors

Interstate Natural Gas Association of America

Koch Industries, Inc.

MidCon Corp.

Natural Gas Supply Association

PanEnergy Corporation

Sonat Inc.

The Williams Companies

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Comments on Miscellaneous Trade Proposals (Advisory No. TR-17)

Dear Mr. Moseley:

These comments are submitted on behalf of the Lawyers' Committee of the Fair Trade Forum pursuant to the above-referenced Advisory of the Subcommittee on Trade of the Committee on Ways and Means.

The Fair Trade Forum is a coalition of companies, trade associations and others concerned with the administration of the U.S. antidumping laws, organized under the auspices of the Pro Trade Group. The members of the Lawyers' Committee are all practitioners who represent clients before both the U.S. International Trade Commission ("ITC") and the Department of Commerce ("DOC").

We would like to commend the Subcommittee for examining the issues listed in the Advisory, and for providing an opportunity for public comment. Our comments address Chairman Crane's bill, H.R. 2822.

We strongly support Chairman Crane's bill that would authorize the DOC to suspend antidumping and countervailing duties temporarily, and for a limited period, on specific products needed by American industry when they are not available from U.S. producers. This bill would correct a plainly unintended consequence of the trade laws. This provision could prove vital to the health and competitive position of U.S. companies that rely on imported components and raw materials, as well as their workers and communities. It would not hamper the effectiveness of U.S. trade laws.

International trade rules require that antidumping and countervailing duties only be imposed when a domestic industry has been injured by dumping or subsidies. Where imports do not cause or threaten injury, they are not actionable, and there is nothing illegal or wrong about importing them. Similarly, there is no injury from imports that cannot be obtained domestically.

A temporary duty suspension provision is necessary because the antidumping and countervailing duty laws have very broad application. DOC's dumping and subsidy analyses and the ITC's injury analyses are based on review of a large category of products. As a result, any resulting antidumping or countervailing duty order may well include products that are not made in the United States. Clearly, imposing dumping and countervailing duties on products that are not available from domestic producers does not reduce injury to any domestic industry and may well harm downstream users who must import those products. Congressman Crane's proposal would authorize the DOC to fine-tune the application of the antidumping and countervailing duty law in such situations.

FAIR TRADE FORUM

In our view, none of the existing procedures (DOC or ITC) adequately addresses our concerns about lack of domestic supply. There are several reasons for this: First, none of the existing procedures directly consider the availability of the domestic product, instead the operative consideration is whether a product falls within the petitioners' definition of scope or whether a product is included within the technical "class or kind of merchandise" or "domestic like product" definitions.

Second, unlike H.R. 2822, all of the current procedures remove products from the scope of the order on a permanent, as opposed to a temporary basis. Permanent exclusion of the product from the scope of a proceeding means that petitioners will not be protected in the future from unfair trade practices with respect to that product, even if they start to manufacture it. By contrast, the temporary relief authorized under H.R. 2822 will encourage domestic industry to develop new products, because downstream customers will remain in the United States. Thus, when the U.S. industry begins to manufacture the needed input product, the industry will have a U.S. customer base. Once the domestic industry begins to manufacture a particular product, the relief afforded by H.R. 2822 would be terminated and the protections of the antidumping duty order fully reinstated. This benefits the producer and the user.

Third, under most of the current procedures (such as "changed circumstances" reviews), petitioners are given an absolute veto power over any action, without any obligation or opportunity on the part of the DOC to evaluate the merits of their opposition.

Fourth, U.S. downstream users are denied standing to participate in any of the current procedures, even though they may be harmed by the inclusion of particular products in antidumping or countervailing duty orders.

Fifth, the current procedures are not sufficiently flexible to allow for timely relief. For example, a "changed circumstances" review may not be conducted less than twenty-four months after the antidumping or countervailing duty order was issued unless "good cause" is shown.

The temporary duty suspension provision will not undermine the effectiveness of the antidumping law or the protection that this law affords to U.S. producers and workers in anyway. It is not designed to alter the substance of the law, or to reduce the scope of orders. The remedy would only apply in situations where products cannot be obtained in the United States -- in which no U.S. producer benefits from the protection of antidumping laws and downstream U.S. producers and their suppliers would be harmed.

The DOC's opposition to the concept of a short supply provision appears to flow from concern about the burden that such a provision might place on the DOC and the difficulty of reaching a decision in certain cases. The discretionary aspect of H.R. 2822 addresses both of these concerns. H.R. 2822 authorizes, but does not require, DOC to suspend antidumping and countervailing duties. If DOC is unduly burdened by the volume or difficulty of such decisions, it can exercise its discretion not to make such determinations. The difficulty of applying this provision in some situations does not mean that the DOC should not have the authority to address domestic unavailability in situations where the issues are clear and relief is clearly warranted. DOC's concerns are clearly outweighed by the burden that is placed on downstream industries in situations involving domestic unavailability.

The current failure of U.S. antidumping and countervailing duty laws to consider domestic availability of products subject to these proceedings continues to hamper the competitiveness of numerous U.S. companies. The proposed legislation gives the DOC the flexibility and control necessary to address changing market conditions. Accordingly, the Fair Trade Forum urges the Committee to approve H.R. 2822.

Respectfully submitted,

Peter O. Suchman

Peter O. Suchman
on Behalf of the Lawyers' Committee of the Fair Trade Forum

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March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington DC 20515

Re: Written Comments on Miscellaneous Trade Proposals (TR-17)

Dear Mr. Moseley:

In an advisory from the Ways and Means Committee's Subcommittee on Trade dated January 31, 1996 (TR-17), the Subcommittee has solicited views from the public on various miscellaneous trade proposals. The first two items on the agenda (H.R. 2822 and H.R. 2795) are of importance to the Florida winter vegetable producers. These views are submitted on behalf of the State of Florida Department of Agriculture and Consumer Services. The Florida growers were unsuccessful in seeking provisional relief under section 201 of the Trade Act of 1974 last year. The crisis facing Florida growers in the current growing season calls for a legislative solution along the lines of H.R. 2795. At the same time, being interested in conditions of fair trade, the industry opposes the "temporary duty suspension" provisions of H.R. 2822 as unworkable and unnecessary and ultimately unfair to domestic producers.

H.R. 2795 Makes Sense for Perishable Products

Competition in highly perishable products is different from that confronting many other products. So-called "winter vegetables" present the situation where the bulk of domestic production during the late fall to early spring occurs in Florida. The bulk of imports from certain countries occurs during this same growing season, meaning that the impact of imports during this season will likely be primarily on Florida growers. Despite this self-evident fact and trade flows which confirm the primary trade impact, the Commission in a prior decision [Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase)] refused to consider the disproportionate impact suffered by Florida growers during this particular growing season. Such an approach by the Commission, even if permissible under existing law, does not appear to be required by our international obligations nor by prior Commission practice in other injury situations where the Commission has, at a minimum, considered whether producers in the region (here time period) most directly affected have suffered disproportionate harm. See, e.g., Fresh Cut Roses from Colombia and Ecuador, Inv. Nos. 731-TA-684-695 (Final), USITC Pub. 2862, at I-21 n.124 (March 1995); Crushed Limestone from Mexico, Inv. No. 731-TA-562 (Prelim.), USITC Pub. 2533, at 9-13 (July 1992).

H.R. 2795 attempts to clarify the right of the Commission to define an industry where perishable products are involved as being limited to growers who primarily are involved in a specific growing season. As was noted in the July 1994 U.S. Department of Agriculture study, Competition in the U.S. Winter Fresh Vegetable Industry (Agricultural Economic Report Number 691) at 1:

> Florida and the Mexican State of Sinaloa supply most winter fresh vegetables to U.S. consumers. Because their production and marketing seasons are similar, Florida and Mexico are in direct competition during October through June. The most intense competition is during December through April when both areas are in full production and these two producing areas account for over 90 percent of the U.S. market for several vegetables.

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That "winter vegetables" constitute a distinct product and industry within ordinary commercial parlance can be seen from the literature and from prior trade law actions and judicial decisions. U.S. Department of Agriculture study, Competition in the U.S. Winter Fresh Vegetable Industry (Agricultural Economic Report Number 691)(July 1994); USDA, Florida and Mexico Competition for the Winter Fresh Vegetable Market (Agricultural Economic Report Number 556)(1986); A. Schmitz, Robert S. Firch, & J. Hillman, Agricultural Export Dumping: The Case of Mexican Winter Vegetables in the U.S. Market, American Journal of Agricultural Economics, Nov. 1981 at 645; Certain Fresh Winter Vegetables from Mexico, 45 Fed. Reg. 20512 (March 28, 1980); Southwest Florida Winter Vegetable Growers Association v. United States, 484 F. Supp. 910 (1980). Only the Commission decision in 1995 [Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase), USITC Pub. 2881 (April 1995)] fails to recognize the existence of a distinct product and industry.

H.R. 2795 is an effort to clarify the correct construction of U.S. law in a situation such as winter vegetables (e.g., tomatoes, peppers, squash, cucumbers, eggplant, beans, and other products). The Committee in reporting out the bill should confirm that H.R. 2795 will in fact cover Florida's winter vegetable industry.

There Should Be No Exceptions to Antidumping Duty Order Coverage

In the area of winter vegetables, there can be no economic justification for exclusion or "suspension" of antidumping duties on a claim that domestic growers may not be able to meet demand or may have reduced supply. If there is a reduction in supply for any reason (e.g., weather problems), foreign goods imported should be at non-dumped prices. To the extent that imports occur at dumped prices in such situations, the activity is irrational and/or predatory and certainly should be subject to ordinary antidumping law requirements.

As the Committee is aware, the antidumping law does not affect foreign product availability. All U.S. antidumping law requires is that foreign producers either cease price discrimination or that importers pay the difference between the import price and a fair value. An order cannot create a shortage of product. Since the law and our international rights envision injured domestic producers receiving relief from discriminatory prices, Congress should not add provisions which would deny domestic producers the only relief available under the antidumping law.

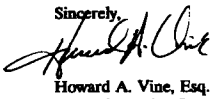
Because H.R. 2822 addresses a "false" issue -- shortage of product when the law creates no shortage -- it should be rejected. If Congress is concerned about the ability of injured domestic industries to supply a greater percent of domestic demand following the issuance of an order, Congress should focus on providing compensation to injured domestic industries (e.g., through the payment of antidumping duties collected to petitioners) and on making relief available earlier in time (i.e., reducing the harm suffered before relief is available).

Moreover, H.R. 2822, if adopted, would further complicate and increase the expense for domestic parties participating in investigations. Since "temporary suspension" permits imported product to avoid the requirements of fair trading, it can be anticipated that there will be many requests for such "suspensions", each of which will require vigilance by domestic producers to review, marshall facts and respond to. Such increased burdens will make the administration of the law more expensive for all participants including the Commerce Department at a time of reduced budgets.

Congress should focus on providing domestic industries, their workers and communities early and effective relief under U.S. trade laws. Such relief assures competitive suppliers for purchasers. Accordingly, H.R. 2822 should be rejected.

We appreciate the opportunity to present these views for the Subcommittee's consideration.

Sincerely,



Howard A. Vine, Esq.
Counsel to the State of Florida Department of Agriculture and Consumer Services

cc: The Honorable Bob Crawford, Commissioner of Agriculture, State of Florida Department of Agriculture and Consumer Services
Members of the Florida delegation to the U.S. Congress

Florida Sugar Marketing & Terminal Assn. Inc.

Members.
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Okeelanta Corporation
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March 1, 1996

BY HAND-DELIVERY

Phillip D. Moseley
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Re: TR-17: Written Comments on Miscellaneous Trade Proposals

Dear Mr. Moseley:

The Subcommittee on Trade of the Committee on Ways and Means has recently requested written comments for the record on various miscellaneous trade proposals. These views are submitted by the Florida Sugar Marketing & Terminal Association, Inc., an industry association that has participated in antidumping investigations that could be adversely affected by one of the miscellaneous trade bills, H.R. 2822.

H.R. 2822 Should Be Rejected

Neither antidumping nor countervailing duty proceedings affect foreign product availability. Rather, the laws simply require that when foreign producers are found to engage in price discrimination which is injurious to U.S. industry, the foreign producer must either raise its price or the importer will be required to pay the difference (i.e., the continuing level of price discrimination) to the U.S. government. For example, in sugar, the European Union heavily subsidizes exports of sugar -- as recently confirmed by a Canadian countervailing duty investigation. The EU system similarly results in very high internal prices for sugar within the EU. The U.S. dumping orders against sugar from various EU countries assure that EU sugar imports are either priced fairly or that U.S. importers pay the price differential so EU companies compete on the basis of the prices they charge at home. This effort at neutralizing price discrimination -- an effort which can be frustrated by foreign producers who sell through related party importers and simply absorb part or all of the duties

owed -- is the only relief injured domestic industries receive under the antidumping or countervailing duty law.

Unlike quotas or various other restraint agreements, antidumping duty and countervailing duty orders can never cause a shortage of product in the market. Hence, there can be no factual justification for waiving the requirement that foreign producers not engage in unfair trade practices once an antidumping or countervailing duty order is entered.

The **existing and longstanding practice** of the Commerce Department and the International Trade Commission provides a basis for determining whether, in large or complex cases, particular items are of interest to the domestic industry. It is quite common for there to be many clarifications of scope during an original investigations. Moreover, this process takes place not only during the original investigation at each agency but also at Commerce after an order through scope of investigation inquiries. 19 C.F.R. 353.29; 19 C.F.R. 355.29. A recent permutation of the scope inquiry has been a number of "changed circumstance" determinations where there was no domestic interest in a product. The sugar antidumping orders have recently been subject to such a request regarding whether manufactured homeopathic sugar pellets are within the scope of the orders. The Florida growers have indicated no objection to the exclusion of such products.

While the existing system has adequately safeguarded the interests of purchasers regarding products not relevant to domestic producers, H.R. 2822 would, unfortunately, change the dynamics of antidumping or countervailing duty cases. The bill would escalate the political aspects of these cases, add to domestic producers' costs of participating, reduce the relief received by injured domestic producers, and substantially increase the ability of powerful purchasers to deprive injured domestic producers of the legal remedy the statute envisions. Waiver or suspension of dumping liability for even a "temporary" period deprives domestic producers of the only information -- market signals as to price -- that would permit companies to determine whether to reinvest, reopen or re-employ. It is exactly these false market signals created by dumped prices that lead domestic producers to reduce capacity, employment and investment. By failing to correct these signals, domestic producers will have no basis to correct their judgment on competitiveness.

Finally, the bill would result in a substantial increase in work for the Commerce Department at a time of reduced budgets

and would reduce the revenue received by the U.S. government. None of these results is likely intended by the sponsor; none can be justified.

H.R. 2822, rather than focusing on the problems that result in domestic industries having reduced supply availability (construction of the injury standard to make relief available in most cases only after substantial injury has been incurred, including closing of facilities, reduction of R&D, capital expenditures, employment, etc.) or needing to file broad cases (serious problems of circumvention), would unwittingly exacerbate the harm experienced by domestic industries by rewarding foreign producers who are most effective at harming domestic producers. If dumping is able to prevent a domestic industry from becoming established or knock domestic producers out of the market for a particular item, H.R. 2822 would reward the dumper with a waiver of dumping liability. This cannot be the correct or intended result.

There are factors Congress should consider which would reduce the perceived problems of purchasers:

> First, Congress should ensure that relief is available <u>early</u>. Early relief both reduces the dependence of purchasers on artificially low prices and prevents U.S. producers from cutting back on capital expenditures, R&D, closing facilities and reducing employment. Current administration of the law makes a finding of injury very unlikely and relief almost never available without significant shuttering of facilities.
>
> Second, Congress should safeguard that circumvention is not rewarded with evasion of liability. Current law and administration essentially encourage foreign producers to circumvent orders. This encouragement takes the form of escape of liability for every entry that has been liquidated and the prospective nature of relief once a scheme has been found out and addressed. When orders are easily circumvented, the market signals for domestic producers are distorted, reducing both profitability and reinvestment in people, equipment, technology and facilities.
>
> Third, Congress and the Administration should make follow-on cases easier, not harder, to win. There have been many cases at the ITC where, following a finding of injurious dumping in a first case, domestic

producers have started reinvesting only to be confronted with substantial dumping from additional foreign sources. The ITC has often taken the fact of reinvestment as a sign of lack of injury and rendered a negative injury determination. Stated differently, domestic producers are penalized for taking the very action envisioned by Congress under the law -- reinvesting and re-employing in light of the first finding of injurious dumping. Such construction of U.S. law can cause injured industries to either postpone relief out of fear that renewed investment will be destroyed through new dumping or to bring as broad a case as possible initially to reduce the likelihood of a second case being needed later. Change in construction of the law would let companies focus on the problem at the moment without fear that shifting problems will be unaddressable for a period of time.

Fourth, Congress and the Administration should ensure that relief when provided is effective. Overly narrow construction by Commerce of the reimbursement provision, the massive problem of duty absorption by related party importers, pressure by major purchasers on foreign producers to set up related party importers so dumping prices can continue uninterrupted -- all of these practices seriously undermine the effectiveness of the laws and hence reduce the ability of domestic producers to respond.

Fifth, Congress should consider providing an incentive to foreign producers to cease dumping. Such an incentive would be the payment of dumping duties collected to the injured domestic industry. Such a change to U.S. law would speed up relief to the domestic industry by encouraging foreign producers to charge a fair price, increase the ability to reinvest (either through earlier reestablishment of fair prices in the market or through receipt of dumping duties actually collected) and reduce the search for false solutions by purchasers seeking continued access to dumped prices.

Early and effective relief is not only good for domestic producers, it is good for purchasers, for communities and for the economy as a whole as it prevents the misallocation of resources by producers (incorrectly exiting or reducing their presence) and purchasers (incorrectly entering or expanding their presence on the basis of false prices for inputs).

Thank you for the opportunity to submit these comments.

Sincerely,

Fred R. Hill per Jeffrey King

Fred R. Hill
Vice President and
General Manager

COMMENTS OF JOE LANE AND JOHN LAYOUS, CO-OWNERS OF THE GARLIC COMPANY, IN RESPONSE TO THE JANUARY 31, 1995 REQUEST FOR WRITTEN COMMENTS ON MISCELLANEOUS TRADE PROPOSALS, INCLUDING H.R. 2822

On January 31, 1986, the Subcommittee on Trade of the Ways and Means Committee of the House of Representatives asked for written comments on certain miscellaneous trade proposals, including H.R. 2822. These written comments are presented in response to that request.

The Garlic Company is a producer/packer of fresh garlic products, with headquarters in Bakersfield, California. The Garlic Company has been in business for 15 years, and currently employs 76 full-time and 75 part-time and seasonal workers.

Our company and the rest of California's fresh garlic industry was almost wiped out in 1993-94 by a tidal wave of dumped fresh garlic from the People's Republic of China. Were it not for the imposition of antidumping duties against these imports in July 1994, our industry would no longer exist. The duties, which are still in place, saved our industry.

H.R. 2822 would make it much harder for U.S. industries to obtain relief from injurious dumping. H.R. 2822 would provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year if it "determines that prevailing market conditions related to the availability of the product in the United States makes imposition of such duties inappropriate."

This would be a terrible change to the antidumping law. Had it been in place in 1994, it may well have been used by Commerce at the request of U.S. fresh garlic importers and users to lift the dumping duty on fresh garlic from China. As we explain in these comments, that may well have killed our industry.

In the early part of this decade, the U.S. market was consuming about 140 million pounds of fresh garlic each year. About 100 million pounds was provided by the U.S. fresh garlic producers (all of whom are in California), and about 40 million pounds was provided by imports, largely from Latin American countries.

According to Commerce Department import statistics, Chinese garlic imports grew from a mere three million pounds in 1991, to 7.3 million pounds in 1992, to a staggering 54 million pounds in 1993. Imports from all countries in 1993 were almost 87 million pounds -- more than twice the amount of imports in any recent year. Chinese imports constituted 62% of 1993 imports, as opposed to only 7% and 17% of 1991 and 1992 imports, respectively.

The average unit value ("auv") of all imports fell from $.55/lb in 1991 to $.32/lb in 1993. Chinese imports led this fall: the auv of Chinese imports fell from $.30/lb in 1991 to $.22 in 1993. Suffice it to say that the 1993 auv's of all imports -- and in particular the Chinese imports -- was far below the cost of producing fresh garlic in California.

Massive Chinese imports devastated the California garlic producers in 1993 and 1994. In 1993, we had abundant fresh garlic to sell in the U.S. market, but the market was saturated with dumped Chinese garlic. We had to price the garlic we did manage to sell below our production costs. Further, we had to sell a huge amount of Grade A fresh garlic to garlic dehydrators for ultimate use in highly processed foods, at prices that were a fraction of what the product would have fetched on the fresh market in the early 1990s.

The dumped Chinese garlic also caused the California producers to significantly reduce the size of the California fresh garlic crop in 1994. Garlic is planted in the fall, and harvested in the late spring and early summer. Accordingly, each fall we must estimate the number of pounds we think we will be able to sell in the market the next year, and the price we will be able to charge, so that we can determine the number of acres we will need to plant. Given the huge amount and low price of Chinese garlic in the U.S. market in 1993, we had clearly planted "too much" garlic in the fall of 1992 for harvest in 1993.

In the fall of 1993, we reasonably concluded that the Chinese would send at least the same amount of garlic to the United States in 1994 as it did in 1993, and at similar prices. The Garlic Company accordingly concluded that we needed to reduce our fall 1993 planting compared to fall 1992 if we were to have any hope of surviving Chinese imports in 1994. Most other California garlic producers independently came to the same conclusion. As a result, in 1993 the California fresh garlic producers collectively planted the smallest fresh garlic crop in memory. We simply had no other choice.

In January 1994, the California fresh garlic producers, acting collectively as the ad hoc Fresh Garlic Producers Association ("FGPA"),[1] filed an antidumping petition against fresh garlic imports from China. Commerce first imposed antidumping duties in July 1994 after making a preliminary determination the Chinese imports were being dumped at an ad valorem rate of 376%. Commerce issued its affirmative final determination in October 1994, and the International Trade Commission determined that the U.S. fresh garlic industry was being materially injured by Chinese imports in November 1994. Significantly, the ITC found that the major reduction in the domestic industry's 1993 fall planting over previous years was a major manifestation of the injury the industry had suffered.

Chinese imports fell to 13 million pounds in 1994, almost all of which were entered in the first half of the year, prior to the imposition of antidumping duties in July 1994. With dumped Chinese imports out of the U.S. market in the second half of 1994, the market price for fresh garlic rose again above our cost of production and to a fair level under the dumping law. That was good news. Unfortunately, we had a much smaller in crop to bring to market in the second half of 1994 than in previous years, because we had planted a relatively small crop in the fall of 1993. Thus, we did not benefit from the higher, non-dumped market prices in the second half of 1994 as much as we would have had we not reduced our 1993 fall planting in response to the tidal wave of dumped Chinese garlic.

Nevertheless, the prevailing high prices of late 1994 (relative to the prices of 1992 and 1993) told the California fresh garlic producers that they could and should significantly increase the size of their crop plantings in the fall of 1994, relative to the fall of 1993. Our hope was that the continued presence of the dumping duties would ensure that, at the time of our harvest in the spring and early summer of 1995, market prices would be above our cost of production.

Thus, in the second half of 1994, and well into 1995, there was less fresh garlic available in the U.S. market than in 1993, because the California growers had an unusually small harvest in 1994, and the price of Chinese imports were now influenced by dumping duties. Had H.R. 2822 been part of the dumping law in November 1994, when Commerce issued its final dumping order on fresh garlic from China, I'm sure that the coalition of Chinese exporters and U.S. importers that opposed our dumping petition would itself have petitioned Commerce, arguing that "prevailing market conditions related to the availability of the product in the United States" warranted a one-year suspension of dumping duties on fresh garlic from China.

Even having to argue against such a claim would have been extremely burdensome to the California garlic growers. We had just completed a successful but very costly prosecution of a dumping investigation. Obviously, defending against a "short supply" petition in late 1994 would have been very costly. Further, as we read H.R. 2822, Commerce would have complete discretion to grant or deny requests for duty suspensions, and there does not appear to be a right of appeal to a federal court of Commerce's decisions. Thus, the result of such a petition would likely have depended on whatever policy the Executive Branch happened to be following that month with respect to China.

The suspension of the duties would have been as devastating as the dumping itself. With the duties suspended, Chinese imports would again flood the U.S. market, which would send the price back below the California growers' costs of production. Faced with renewed low prices, the California producers would not have significantly increased their 1994 planting, but would have planted a crop equal to or smaller than the 1993 planting. Indeed, several producers likely would have left the fresh garlic business.

The suspension of the dumping duties on fresh garlic from China in late 1994 would have created a self-perpetuating cycle, under which the California industry would never have been able to build its production back up to the level where it could survive. The Chinese importers and U.S. exporters would have been able to argue each year that the suspension of the duties should be renewed for an additional year, in light of the U.S. industry's low production, and the dependency of the U.S. fresh garlic consumers on Chinese imports.

1/ The individual members of the FGPA are: A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., McKittrick, CA; Colusa Produce Corporation, Colusa, CA; Crinklaw Farms, King City, CA; Dalena Farms, Madera, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; Frank Pitts Farms, Five Points, CA; The Garlic Company, Shafter, CA; Rich Peel Garlic Company, Inc.; Salinas, CA; Thomson International, Inc., Bakersfield, CA; and Vessey and Company, Inc., El Centro, CA. These comments reflect only the views of the owners of The Garlic Company.

In fact, there is a good chance that the mere existence of H.R. 2822 in the dumping law at the time we filed our dumping petition in January 1994 would have discouraged us from proceeding. Prosecuting a dumping case is very difficult and expensive, and there is no certainty of victory. I understand that, in recent years, only one out of every three dumping petitions actually results in a final dumping order. Had we known that the law allowed for dumping duties to be suspended in cases of so-called "short supply," we may well have decided not to file our petition, but to instead get into a different business.

The premise of H.R. 2822 -- that dumping duties sometimes cause the imports to which they are applied to be "unavailable" or in "short supply" in the U.S. market -- is bogus. Imports subject to dumping duties are neither embargoed nor placed under quota. On the contrary, there is no limit to the quantity of an import subject to a dumping order that can be brought to the U.S. market. Dumping duties mere assure that the relevant imports will be sold in the U.S. market at a fair, non-dumped price, in a manner that doesn't cause material injury to the domestic producers of competitive products.

From our company's perspective as a victim -- and near fatality -- of foreign dumping, H.R. 2822 is merely a loophole by which foreign exporters and U.S. importers that have lost a dumping case would be able to circumvent the remedy won by the petitioner. It is a bad idea, and the Subcommittee should ensure that it does not become part of the dumping law.

Gary Drilling Company
7001 Charity Avenue
Bakersfield, CA 93308
(805)589-0111

March 1, 1996

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

Thank you for the opportunity to favorably comment on H.R. 2822. Gary Drilling Company is a small family owned company that employees 184 people. These employees are most always the principal wage earners for their families. Gary Drilling operates almost exclusively in California and is engaged as a contractor that actually performs the drilling of oil, gas, water, geothermal, and disposal wells. On average, Gary Drilling will drill over 1,000,000 feet of hole in the ground and over 1,000 wells a year. The family owned company is a significant contributor to California's ability to be the third largest crude oil producing state in the Union.

This ability is threatened by the lack of domestically available drill pipe. Drill pipe is a unique product used in drilling operations. The inside is worn by the hydraulic fluid pumped through it and the outside is worn down by rotation in the earth. For drilling operations to continuously occur, a ready market for drill pipe must be available. The current lag time for filling an order for new drill pipe now exceeds a year. The demand for domestic drill pipe has pushed the price of new drill pipe up by 5% a quarter for the last 5 quarters. That is a compounded rate of increase that exceeds 20% annually.

These conditions are a new development that threatens the ability of our family owned business to provide employment and perform drilling operations. Until the year 1995 drill pipe was available to us at reasonably inflated prices first domestically and then internationally. But when the Uruguay Round Agreements and World Trade Organization agreements became law, our ability to seek international supplies of drill pipe were voided. Until Congress made the new law effective January 1, 1995, the Voluntary Restraint Agreements entered into by the private sectors allowed drilling contractors an exception for oil country tubular goods which included drill pipe. When the domestic market for available supplies of drill pipe were exhausted, petition for foreign supplies could be made under the exemption granted by the VRAs. H.R. 2822 would restore what was available to drilling contractors like Gary Drilling before the current law became effective January 1, 1995.

There are only three suppliers of domestic drill pipe. As a practical matter, there are only two as the third contributes only a minimal volume of drill pipe to the market. Imposing these restraints on domestic users of drill pipe without the ability to seek international supplies when the domestic market of drill pipe is not available is clearly poor public policy. Certainly these present conditions were not intended nor their adverse consequences on employment or energy production. Temporary suspension that allows access to international sources of drill pipe after being heard on a case by case basis by the Federal Trade Commission is certainly a fair mechanism. Drilling contractors like Gary Drilling must compete in a world that depends on a globally priced barrel of oil. Reducing injury from domestic restricted markets for employers such as Gary Drilling is in the interest of public good.

Please recommend favorably H.R. 2822.

Very truly yours,

Gary Green
Secretary/Treasurer

GG:no

James E. Nelson
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February 29, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, D.C. 20515

Dear Mr. Moseley:

I am writing to you concerning TR-16 (ITC Reform) and TR-17 (Miscellaneous Trade Proposals) released by the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives on January 31, 1996. The Gates Corporation and its major subsidiary, The Gates Rubber Company, the world's leading producer of rubber power transmission belts and hose, view these proposals with great concern. First, with regard to TR-16, we see the proposed structural and procedural reforms of the International Trade Commission as increasing the difficulty for domestic company to successfully press a case against unfair trade practices. We strongly believe that the status quo has worked to preserve domestic industry and jobs against the onslaught of imported products with low pricing supported by protected markets. Gates itself has benefited by a 3/3 decision when there was clear finding of dumping by foreign producers. The insertion of an administrative law judge to make injury determinations would just add an additional expense and difficulty for domestic companies and, therefore, provide a benefit for foreign producers.

With regard to TR-17, these discretionary proposals increase the ability for the process to be politically rather than economically determined and would, I believe, taint the entire process. Again, it will further burden domestic industry in making a case against unfair trade practices.

Again, it is our belief that TR-16 and TR-17 are anti-competitive and overly favorable to foreign interest.

Cordially yours,

James E. Nelson

JEN/pa

International Brotherhood of

BOILERMAKERS · IRON SHIP BUILDERS BLACKSMITHS · FORGERS & HELPERS

ANDE ABBOTT
DIRECTOR
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Before the U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Trade

Comments of the International Brotherhood of
Boilermakers, Iron Ship Builders, Blacksmiths, and Forgers & Helpers
In Opposition to H.R. 2822

March 1, 1996

These comments are filed on behalf of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, and Forgers & Helpers. The Boilermakers are the international labor union that represents thousands of workers employed in most of the cement production facilities in the United States. In addition, Boilermakers fabricate, install, and maintain kilns and their emissions equipment. Boilermakers strongly support the continued application of the antidumping laws to commerce between the United States and other countries. In our opinion, H.R. 2822 would fundamentally weaken the antidumping and countervailing duty laws to the real and lasting detriment of manufacturing jobs in the cement industry and related sectors.

In essence, H.R. 2822 is based upon the false premise that supply reductions occasionally attributable to the application of the unfair trade practice laws are detrimental or unexpected. To the contrary, just as application of the copyright laws or labor standards can be expected to reduce the number of illegal or impermissible products marketed in the United States, the unfair trade practice laws only limit those goods that seek entrance into our market in violation of trade laws and standards. What dumpers of foreign goods regard as a "short supply" is in fact the appropriate result of a well-run trading system. Further, our experience in the cement industry dictates that short supplies do not, indeed, result from the application of antidumping laws. As duties are applied, domestic production increases. As market prices rise, the dumping margins diminish. The system as it currently operates is self-correcting. To try to solve a short supply problem that does not exist will only result in lost industrial jobs in this country.

It is our understanding that the Southern Tier Cement Committee has also filed comments with the Trade Subcommittee. The Boilermakers agree with those comments. We will summarize our major points of contention below:

- **"Short Supply" Phases Are Necessary for Capital Investment and Job Creation**

  Cement producers and workers depend on so-called "shortages" during the expansion phases of the construction cycle to decrease fixed costs and to serve as an investment incentive to modernize aging capacity and to build new capacity. Without opportunities for investment in new capacity, we would anticipate further lay-offs as cement producing capacity moves out of the United States.

- **Antidumping Relief Has Had A Favorable Impact On The U.S. Cement Industry**

  During the 1983-1989 expansion of construction activity, the American market was flooded with unfairly priced dumped cement from Mexico, Japan and Venezuela. This dumped cement removed U.S. producers' normal investment incentives and led to a net disinvestment in cement assets during a period of sharply increasing demand. In 1990 and 1991, the U.S. cement industry received favorable antidumping rulings from the Commerce Department and

the International Trade Commission ("ITC") regarding these unfairly priced imports. These favorable rulings and the rebound in construction activity in 1994 and 1995 have led to new capital investment and job creation in the U.S. cement industry.

- **Short Supply Legislation Has Been Repeatedly Rejected In The Past**

  U.S. policy makers soundly rejected a short supply proposal offered by the Republic of Korea during the Uruguay Round Negotiations. A short supply exception amendment was considered by the House Ways and Means Committee and the Senate Finance Committee in 1994 and rejected by a margin of 23 to 15 and 13 to 7 respectively. The acceptance of the World Trade Organization by American workers is at an all-time low; weakening the safety net of unfair trade practice laws, therefore, is ill-advised and bad trade policy.

- **Consideration Of A Short Supply Exception Is Premature**

  The numerous complex revisions to the antidumping and countervailing duty laws made by the Uruguay Round Agreements Act have only been in effect since the beginning of 1995. It will be several years before the effects of these amendments will be understood; therefore, to make any further changes now to the antidumping laws is premature.

- **H.R. 2822 Is Broad, Vague, And Gives Extraordinary New Powers To The Department of Commerce**

  H.R. 2822, unlike previous short supply amendments, gives Commerce the power to limit antidumping and countervailing duties not only in periods of "short supply" but also in any period in which "prevailing market conditions" make the imposition of duties "inappropriate." Also, H.R. 2822 grants Commerce these extraordinary new powers without providing for Congressional guidance or judicial review. Boilermakers oppose such broad grants of discretion that may be used in a manner inconsistent with the best interests of U.S. workers. We believe that the unfair trade practice laws are already too cumbersome for petitioners. Therefore, creating a basis to undo the hard-won gains of the past is completely counterproductive to U.S. trade and employment goals.

- **Antidumping And Countervailing Duties Do Not Restrict Imports; They Simply Correct The Unfair Pricing Of Dumped Imports**

  Under the U.S. antidumping and countervailing duties laws, the amount of imports allowed into the U.S. is not restricted. As demand increases during peaks in the construction cycle, the amount of cement imports also increases, regardless of any countervailing duties that might be associated with those imports; therefore, H.R. 2822 simply allows foreign goods to be imported at unfair prices. It does nothing more to address so-called "short supply" issues.

- **Effective Mechanisms Already Exist That Prevent Products From Unnecessary Exposure To Antidumping And Countervailing Duties**

  The current antidumping laws ensure that Commerce and ITC avoid exposing any product to countervailing duties unnecessarily. Also, as a result of the Uruguay Round Agreements Act, all antidumping and countervailing duty orders are subject to a "sunset review" after five years.

- **H.R. 2822 Destroys The Remedial Purpose Of Antidumping Relief**

  H.R. 2822 would allow foreign respondents to cite the increase in demand, capacity utilization, and prices occurring at the peak of the construction cycle to urge a suspension of

the antidumping orders during a period of "short supply." Suspension of the orders, in turn, would negate any investment incentives and would preclude any new hiring by domestic producers.

- **H.R. 2822 Would Be Difficult To Administer**

  The Commerce Department has fervently expressed its opposition to H.R. 2822, because Commerce recognizes that it would be extremely difficult to determine when a product is in such short supply as to justify a waiver of antidumping relief. H.R. 2822 would add another level of expensive litigation to a process that is already financially daunting for many companies that need access to effective remedies.

- **H.R. 2822 Is Not Revenue-Neutral**

  H.R. 2822 would deprive the U.S. Customs Service of substantial revenue collected in the form of cash deposits on entries of goods covered by antidumping and countervailing duty orders. It is incumbent upon the supporters of H.R. 2822 to specifically identify those sources of revenue that would be used to offset any budgetary shortfalls. Given the premium this Congress has placed upon addressing the budget deficit, Boilermakers believe that further revenue losses should not be incurred merely to confer a benefit of U.S. trading "partners" engaged in unfair trade practices.

The Boilermakers thank you for this opportunity to present our views before the Subcommittee on Trade. It is our strong belief that the unfair trade practice laws, including the antidumping and countervailing duties programs, are critical to preserving both free and fair trade. If you have further questions, please contact Ande Abbott, Director of Legislative Programs, at (703) 560-1493.

Statement of
International Business Machines Corporation
on
HR 2822
before the
Committee on Ways and Means
U.S. House of Representatives

March 1, 1996

IBM appreciates this opportunity to comment on HR 2822, which we support. HR 2822 would allow the Department of Commerce to suspend antidumping and countervailing duties temporarily on products that are not available domestically.

When domestic producers cannot supply a needed product covered by an antidumping or countervailing duty order, the imposition of additional duties on imports of that product punishes U.S. industrial users without providing any offsetting benefit to domestic producers. In this situation, there are two beneficiaries of the additional duties: the foreign suppliers who can raise their prices in the U.S. market and earn windfall profits at the expense of U.S. companies and workers, and the foreign competitors who find that their American counterparts are hamstrung by higher costs. U.S. law should include a temporary duty suspension provision as provided in HR 2822 whereby the payment of antidumping duties on products for which there is no domestic supply could be temporarily waived.

The imposition of antidumping duties on products not available domestically is a particularly poignant issue for IBM. In 1991, the U.S. imposed antidumping duties of 63 percent on active matrix liquid crystal displays ("flat panels") from Japan. Flat panels are used in laptop and other portable computers, as well as in other high-tech applications. The Commerce Department imposed the duties even though not a single U.S. producer had commercial production facilities to produce these displays.

Before the duties were imposed, major U.S. computer manufacturers, including IBM, met with Administration officials to explain that the imposition of these duties would result in companies with domestic facilities manufacturing portable computers moving offshore. The Administration responded that the dumping law did not provide either Commerce or the International Trade Commission any flexibility to take into account the fact that there was no commercial availability of the display screens in the United States.

Eric Garfinkel, former Assistant Secretary of Commerce and administrator of the U.S. antidumping law at the time the flat panel case was decided, has acknowledged that the antidumping law does not allow the administrators sufficient flexibility to make their decisions in a way that helps the injured industry without harming related industries. In a 1993 study by the Council on Competitiveness, which examines the flat panel case in detail, Garfinkel noted a possible solution:

> "One option is for the Commerce Department or the ITC to take greater account of the ability of the petitioning industry to supply domestic customers. Under this option, the ITC would have sought, in the case of flat panel displays, to determine whether U.S. display makers were able to meet the supply needs of laptop computer companies before finding injury. Had the domestic industry been found unable to meet domestic demand, dumping duties could have been delayed. Duties could then have been imposed as soon as the U.S. industry had developed the capacity to fulfill domestic supply needs."[1]

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[1]Council on Competitiveness, Roadmap for Results: Trade Policy, Technology and American Competitiveness at 35 (July 1993).

International Business Machines
HR 2822

If there had been a temporary duty suspension power in 1991, the Commerce Department would have had the flexibility, within carefully prescribed limits, to waive temporarily the imposition of antidumping duties on flat panel displays until they were produced in commercial quantities domestically. Such a provision would have permitted U.S. computer manufacturers to import the display screens until there was adequate domestic production capacity to meet the demand. Instead, the duties were imposed, and IBM, Compaq and Apple, faced with the prospect of surrendering the fastest growing segment of the U.S. computer market to Japanese competitors, were forced to move their laptop manufacturing facilities offshore in order to remain competitive in the laptop computer market. In the process, the United States lost a substantial number of manufacturing jobs.

From a policy standpoint, it does not make sense for the U.S. Government to have only the perverse choice between jeopardizing the U.S. portable computer industry or abandoning a U.S. flat panel industry that had not even come close to beginning production of the panels in commercial volumes. A temporary duty suspension, as suggested in HR 2822, would provide for the needed administrative flexibility to temporarily waive the imposition of duties in anomalous situations such as the flat panel display case and would permit the administrators of the law to make decisions that assist the injured industry without causing harm to related industries.

For these reasons, we urge the Committee to adopt the modest but important changes suggested in HR 2822.

Statement of

The Labor-Industry Coalition for International Trade (LICIT)

on

The Temporary Duty Suspension Act, H.R. 2822

Submitted to the Committee on Ways and Means Subcommittee on Trade

February 29, 1996

We appreciate the opportunity to submit a statement on H.R. 2822, the Temporary Duty Suspension Act. This statement sets out the views of the Labor-Industry Coalition for International Trade (LICIT). LICIT, along with its subsidiary, the Coalition for Open Trade, brings companies and unions together to advocate increased, balanced and equitable international trade. Companies and labor organizations that have joined in recent LICIT statements on trade policy are American Flint Glass Workers; Association for Manufacturing Technology; Bethlehem Steel; Chrysler Corporation; Cincinnati Milacron; Communications Workers of America; Corning Inc.; Industrial Union Department (AFL-CIO); Intel Corporation; International Brotherhood of Electrical Workers; International Union of Electronic Workers; Motorola Inc.; UNITE; United Rubber Workers; and United Steelworkers of America.

I. Summary

The Temporary Duty Suspension Act, H.R. 2822, would grant the U.S. Department of Commerce (DOC) discretionary authority to suspend the imposition of antidumping or countervailing duties on a product based on a DOC determination that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." This legislation, if adopted, would politicize the application of U.S. trade laws, would undermine the effectiveness of those laws as a remedy against unfair foreign trade practices, and would give the DOC unnecessary and inappropriate power to create industrial policy. For these very reasons, the DOC itself has long opposed the granting of such authority. Meanwhile, a temporary duty suspension mechanism is unnecessary, as availability issues can be addressed quite effectively under current law.

The U.S. antidumping and countervailing duty laws encourage foreign nations to open their markets and to rely less on subsidies and dumping to support uneconomic producers. H.R. 2822 would subvert the U.S. Government's ability to achieve these goals. We urge the Subcommittee to reject the bill.

II. Background -- Unfair Trade Practices and Remedies

The United States maintains the world's most open market. Unlike the U.S. Government, foreign governments have long sought to nurture and protect domestic production capacity in industries, such as steel and electronics, believed to have strategic importance. The resulting trade distortions, which have seriously damaged several competitive and strategically important U.S. industries, generally take two forms.

- Dumping. Cartels and comprehensive import protection have restrained competition and diminished market pressure on foreign producers to cut back excess capacity -- giving rise to injurious dumping. Dumping occurs when producers can practice price discrimination between markets, by selling at a higher price in the home market than in export markets; they can do this when they are able to limit imports into their own market and restrict internal competition.

- Subsidies. Foreign governments subsidize their producers through a variety of direct and indirect means, including equity infusions, soft loans, grants, "restructuring" aid, debt relief and provision of key inputs at preferential prices. Subsidies give a recipient's products an artificial competitive advantage in all markets where they are sold. The portion of a subsidy which benefits products shipped to the United States is subject to offset under the U.S. countervailing duty law.

These unfair practices pose an ongoing problem. While U.S. trade remedy laws have functioned reasonably well where invoked, they do not eliminate dumping and the cartels that make it possible, or prohibit harmful subsidies. The same is true of relevant international rules, including the new Uruguay Round agreements. International subsidy discipline advanced only marginally (if at all) in the Uruguay Round and remains inadequate. Meanwhile, there are no international rules at all in the area of anticompetitive practices (which lead to dumping and make national antidumping remedies necessary).

Under U.S. law, antidumping and countervailing duties are imposed on unfairly traded imports in an amount equal to the margin of dumping or subsidy determined to exist by the DOC after a lengthy and thorough investigation. The investigatory process includes extensive opportunities for foreign producers to submit information relating to whether they are dumping or benefitting from subsidies. Moreover, even where the DOC finds dumping or subsidization, duties are only imposed if there also is a determination of material injury by the U.S. International Trade Commission (ITC) with respect to the same products. ITC decisions follow an investigation, independent of the DOC's, that provides further opportunities for foreign producers to present relevant data and analyses. This system is designed to ensure that the trade laws act only as a remedy to offset the precise amount of unfair advantage provided to the unfairly traded imports, and that duties are only collected where the unfair trade is having negative consequences in the U.S. market.

Three aspects of the current U.S. trade remedy system are particularly relevant to any consideration of a temporary duty suspension mechanism:

- Remedial duties are available to injured U.S. industries, where injurious dumping or subsidization is shown to have occurred, *as a matter of right*. These are not discretionary, politically-motivated trade policy actions. Rather, they are automatic responses to adjudicated violations of recognized trade law norms.

- The DOC examines only pricing and subsidization. It does not consider, and need not consider, conditions of competition in the U.S. market. That is something for the ITC to consider in its injury analysis. The DOC has no existing information-gathering mechanism that would allow it to analyze U.S. market conditions as the ITC does.

- The discretion provided to the DOC and the ITC in making their respective determinations has been carefully circumscribed by Congress over time. The unmistakable trend and Congressional goal has been to ensure that these determinations are made on the basis of the facts, consistent with the statutory standards established by Congress, rather than on the basis of political pressures. U.S. petitioners and foreign respondents also have extensive rights to appeal DOC and ITC determinations for review by a specialized federal court, the Court of International Trade (CIT).

Fair and consistent application of the unfair trade laws is critical to U.S. manufacturers, many of whom must compete in markets characterized by pervasive foreign subsidies and dumping. Unlike the U.S. market, which is open, private and subsidy-free, foreign producers often benefit from government subsidies and operate in home markets that are effectively closed to import competition.

III. The Temporary Duty Suspension Act

The Temporary Duty Suspension Act, H.R. 2822, would fundamentally alter the administration of U.S. trade law by granting broad discretion to the DOC regarding when antidumping and countervailing duties would be imposed.

- The legislation would give the DOC authority to suspend duties whenever the DOC sees such duties as "inappropriate" in light of "prevailing market conditions related to the availability of the product in the United States." The bill provides no standards as to when market conditions might justify such a determination, nor does it provide for judicial review of the contemplated DOC determinations.

- The bill would permit the DOC to suspend the duties "in whole or in part," thus giving the DOC discretion to impose duties lower than the margin of dumping or subsidy determined to exist under the statute.

- While the duty suspension could be granted initially for one year, the bill provides for an unlimited number of one-year extensions. The only basis for reimposing duties once suspended would be a DOC finding that there is "insufficient basis for continuing the suspension." This language in effect gives a preference for maintaining a suspension, once granted, absent extraordinary circumstances.

IV. Six Reasons Why A Temporary Duty Suspension Mechanism Should Be Rejected

The stated purpose of H.R. 2822 is to provide for an exception to the trade laws when the product at issue is deemed to be unavailable from U.S. producers. This bill, and similar proposals in the past, have been characterized as addressing "short supply" situations.

"Short supply," however, is an intentionally misleading concept devised by foreign producers intent on shielding their unfair trade practices from offset. It is based on the notion that antidumping or countervailing duty orders render particular products unavailable -- or insufficiently available -- in the domestic market. An antidumping or countervailing duty order, however, is not a quota. Such an order does not limit the amount of foreign merchandise that can enter the United States; it merely encourages the sale of the imported merchandise at a fair price. What a duty suspension mechanism would really provide is the right to obtain imported goods at dumped and subsidized prices.

During consideration of the Uruguay Round implementing legislation in the last Congress, amendments were offered in Committee to create a "short supply" exemption to the U.S. trade laws. The amendments were opposed by the Administration -- by the very DOC which the amendment would have vested with new and unwanted discretion. Both the House Committee on Ways and Means and the Senate Committee on Finance rejected these short supply proposals. These amendments were rejected for a number of sound policy reasons which apply equally to H.R. 2822.

1. Adoption of a temporary duty suspension provision would undermine the U.S. trade laws.

The purpose of the trade laws is to provide a remedy against foreign unfair trade practices by offsetting the amount of the dumping or subsidy provided to the imports under investigation. The laws encourage fair pricing of the affected imports, but they do not limit the quantity of imports which may enter the United States. Granting the DOC authority to waive antidumping or countervailing duties is therefore unnecessary to ensure adequate supply of a product. Rather, such a provision would simply reward those foreign companies that have driven U.S. products out of the market through dumping or subsidies by denying U.S. companies the relief needed to allow them to invest in new plant and equipment.

When foreign dumping and subsidies drive U.S. producers from the market, competition is reduced and consumers lose. By encouraging U.S. producers to re-invest, antidumping and countervailing duties can lead to a more competitive market, which serves the long-term interest of consumers (including industrial consumers) and the economy as a whole.

Proponents of a temporary duty suspension provision argue that it is only intended to help users of products subject to duties remain competitive in the world market. It is not possible, however, to remove or reduce duties without encouraging foreign producers to continue dumping or foreign governments to continue subsidizing. As long as prices are kept

artificially low through unfair trade practices, there will be no incentive for U.S. industry to re-invest and again manufacture the products involved. Antidumping and countervailing duties are calculated to result in a "normal" price, i.e., a price that would prevail in the market absent subsidies or dumping. In this way, the imposition of duties makes it commercially feasible for U.S. companies to once again invest and produce in a freely functioning undistorted market. Removal of the duties, even if labeled "temporary," would create a self-fulfilling prophecy: if the market distortions that inhibit reinvestment continue, potential U.S. producers will avoid the market.

2. A temporary duty suspension provision would politicize the application of U.S. trade laws.

The temporary duty suspension legislation contains no standard regarding when prevailing market conditions might make imposition of antidumping or countervailing duties inappropriate. It also makes no provision for judicial review. At best, this set-up would make DOC bureaucrats the sole judges of when market conditions justify providing relief to a particular industry, with no system of checks and balances for ensuring that decisions are fair and unbiased. At worst, it would made the DOC a target for lobbying efforts of foreign and domestic producers that could result in decisions made for purely political purposes. The DOC has, accordingly, opposed such a grant of discretion.

The current trade laws provide clear and objective standards for determining whether dumping or subsidies have occurred; the impact, if any, on product prices; and whether a U.S. industry has been injured or threatened with injury. These determinations are made in a well-understood process that is open and transparent to all affected parties. The temporary duty suspension legislation would introduce major new uncertainties into the trade laws and open the door to their arbitrary application.

The additional uncertainties created by a temporary duty suspension mechanism could discourage U.S. producers who have been injured by unfair trade practices from ever seeking relief under the trade laws. The requirements already facing producers who claim they have been injured by foreign dumping or subsidies are time-consuming and expensive, and there is no guarantee that the DOC or the ITC will even initiate an investigation. A temporary duty suspension provision, by making it possible to overturn objective decisions on the basis of political considerations, would risk deterring all but the financially and politically strongest industries from pursuing the remedies provided by the trade laws.

A temporary duty suspension provision is not a finely-tuned response to a narrow, technical problem. Rather, it is a fundamental retreat from the existing, non-political paradigm in which trade remedies are available as a matter of right once the necessary elements (dumping or subsidy, plus injury) have been established.

3. A temporary duty suspension provision would give the DOC the power to establish industrial policy.

In addition to the potential for political abuse, the discretionary authority provided under H.R. 2822 would effectively allow the DOC to implement a national industrial policy based on a particular Administration's views as to which industries are important to the economy. Currently, the DOC is limited to making factual findings regarding the existence and extent of unfair trade practices. Congress should not give the DOC the power -- which it does not want -- to examine which industries "deserve" relief under the U.S. trade laws and which do not.

4. Giving the DOC discretionary authority to suspend duties would interfere with the proper role of the ITC.

To obtain relief under the trade laws, a U.S. industry must demonstrate that dumped or subsidized imports are causing or threatening to cause injury to that industry. In order to find injury, the ITC must determine that the imports compete with the products made by the domestic industry. If the imports and domestic goods do not compete, no injury to the U.S. industry is found. Moreover, the ITC's injury analysis is rigorous -- even industries that

establish high antidumping and countervailing duty margins before the DOC often are denied relief by the ITC.

Giving the DOC authority to suspend duties on products found by the ITC to compete with domestic goods would permit the DOC to overrule the ITC. It would also, wastefully, require DOC to replicate ITC's analysis of U.S. market conditions.

5. A temporary duty suspension mechanism would be prone to abuse.

The proponents of a temporary duty suspension provision argue that the provision would be used only where U.S. companies require products with unique specifications that no U.S. products meet. However, creating such a loophole would simply encourage purchasers of dumped or subsidized goods to draft their specifications narrowly enough so that only the dumped or subsidized goods met the specifications. Evaluating non-availability claims would necessarily result in the DOC bureaucracy making judgments about whether adequate substitutes exist for the products at issue in terms of performance, price and quality. These are judgments which the DOC, by its own admission, is ill-equipped to make and which would extend the heavy hand of government into fundamental business decisions.

6. A temporary duty suspension mechanism is unnecessary.

Any real instances of inadequate domestic supply can be remedied under existing law through changes in the scope of a proceeding or order. Where there is no U.S. production of a product that can compete with the imported good subject to an order -- or no U.S. industry interest in producing such a product -- the order may be amended to exclude that product. Petitioning industries have traditionally demonstrated good faith in supporting such adjustments.

Current law provides four mechanisms for addressing availability issues. First, the DOC can define and clarify the scope of an antidumping or countervailing duty proceeding during the investigation phase. This enables the DOC to exclude from coverage of any order products that are not relevant to the purpose of the petition. Second, once an order is in effect, the DOC continues to have the authority to clarify the order's scope to exclude products which it was not intended to address. Third, under appropriate circumstances, the ITC can define the "like product" in such a way that it excludes from an investigation products that are not produced in the United States or do not compete with covered merchandise. Any product not subject to an affirmative injury determination cannot be subject to duties.

Fourth, either the DOC or the ITC can undertake a changed circumstances review, leading to revocation of all or part of an order.

- The DOC has utilized this procedure to tailor antidumping or countervailing duty relief, often with the support of the petitioning industry. In November 1995, for example, Canadian producers asked for a changed circumstances review to determine whether an antidumping order on steel plate from Canada should be revoked insofar as it applied to a particular kind of cobalt-free plate. In a determination published just a few days ago, the DOC ruled that the domestic industry's lack of interest in having antidumping duties apply to the product constituted changed circumstances and excluded the product.1/ In another recent case, the DOC revoked an order over the active opposition of U.S. interests after determining that the product in question was not produced in the United States.2/

1/ Certain Cut-to-Length Carbon Steel Plate from Canada, 61 Fed. Reg. 7471 (Dep't Comm. 1996) (Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order).

2/ Active Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor from Japan, 58 Fed. Reg. 34,409 (Dep't Comm. 1993) (Final Results of Changed Circumstances Administrative Review and Revocation of Order).

- The ITC, similarly, conducted a changed circumstances review in Synthetic L-Methionine From Japan based on claims that there was no industry in the United States producing the subject product and that the subject product was not like any product produced in the United States. This review led to the revocation of the injury finding in its entirety.3/ The ITC also initiated a changed circumstances review in Acrylic Sheet from Japan based on the following factors: (1) there was a new product developed after the 1976 dumping finding; (2) the new product was not imported until 1981; and (3) there was no U.S. production of this new product. This review, which would likely have led to an appropriate modification of the order, was dismissed as moot after the Court of International Trade ruled that the merchandise subject to the review was outside the scope of the original investigation in any event.4/

If there is concern that these mechanisms are insufficiently responsive or do not work fast enough, then consideration should be given to how the relevant administrative processes could be streamlined. It makes no sense, however, to superimpose a new bureaucratic process on the existing ones. Indeed, a duty suspension would be "temporary," in contrast to the current processes which result in permanent changes in scope.

V. Conclusion

The U.S. trade laws have been carefully structured to promote free and open markets linked by vigorous and fair trade. The process by which these laws are administered is the most objective and transparent in the world. All interested parties are afforded access and the opportunity to present their views, and the resulting determinations are based on clear, impartial standards. H.R. 2822 would undermine these principles and processes by introducing political pressure, subjectivity and unpredictability. It would reduce the U.S. Government's capacity to foster open markets while increasing the role of the federal bureaucracy in private business decision making. It would also discourage new capital investment; limit the ability of U.S. producers to restructure to meet the changing demands of the marketplace; and reward foreign producers for continuing to engage in harmful and unfair trade practices.

Meanwhile, any legitimate availability issues can be adequately addressed under current law. Proposals for a temporary duty suspension mechanism should be rejected as fundamentally unsound.

3/ See Synthetic L-Methionine From Japan, Inv. No. 751-TA-4, 46 Fed. Reg. 30216 (June 5, 1981) (Institution of Investigation); Synthetic L-Methionine From Japan, USITC Pub. 1176, Inv. No. 751-TA-4 at 3-13 (July 1981).

4/ See Acrylic Sheet from Japan, Inv. No. 751-TA-8, 49 Fed. Reg. 4045 (Feb. 1, 1984) (Institution of Investigation); Acrylic Sheet from Japan, Inv. No. 751-TA-8, 49 Fed. Reg. 27643 (July 5, 1984) (Dismissal).

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March 1, 1996

Mr. Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
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1102 Longworth House Office Building
Washington, D.C. 20515

Re: January 31, 1996 Request; Comments on H.R. 2822, Temporary Duty Suspension Legislation

Dear Mr. Mosely:

The law firm of Lipstein, Jaffe & Lawson, L.L.P., consists of practitioners with private and government experience in antidumping and countervailing duty cases. We provide the following comments on H.R. 2822 based on our experience in these matters.

Antidumping and countervailing duty laws serve a vital purpose. They protect against unfair trade acts that injure American industry. However, in their effort to protect, these laws sometimes snare goods that American industry fails to manufacture, either altogether or in sufficient quantities to match demand. Absent some mechanism to suspend duties in such circumstances, these laws injure American industries that have no choice but to rely on imports.

Congress should strike a balance between industries that need protection from imports and industries that need imports to survive. The temporary duty suspension provision (H.R. 2822) being considered by this Committee ensures that companies that need goods not produced in the United States can easily purchase those goods, enabling them to compete in the global marketplace. It does not exclude imports from a finding under the antidumping or countervailing duty laws; it only temporarily exempts them from dumping or countervailing duties. H.R. 2822 thus would help establish a competitive balance for all segments of American industry.

In a recent letter to Committee members, Assistant Secretary Susan Esserman listed legal avenues she thought allowed the exemption of certain products from antidumping or countervailing duties, thereby negating any need for a temporary duty suspension provision. Unfortunately, agency practice does not support her statement. While U.S. antitrust agencies examine substitutability in deciding whether two products compete against each other, the Department of Commerce and the International Trade Commission do not. As the examples below illustrate, the trade agencies cannot currently take notice that the industry petitioning for relief does make every product (or even key products) likely to be covered by a particular antidumping or countervailing duty order.

I. The Current Law's Broadbrush Approach To The Scope Of An Investigation Precludes Consideration Of Short Supply.

In 1993, no one in the United States made seat belt retractor steel that could be used to produce seat belt retractor springs that met the strict standards of the National Highway Transportation Safety Administration ("NHTSA"). That meant nothing to the Department of Commerce. Commerce refused to exclude imports of seat belt retractor steel from the antidumping duty investigation of cold-rolled steel from Germany.[1]

Commerce's refusal to exclude imports of seat belt retractor steel from the antidumping investigation illustrates a fundamental flaw in the current law. Commerce found that seat belt retractor steel matched the broad product characteristics used to define the scope of the relevant antidumping investigation. According to Commerce, if it subdivided "the scope to reflect every particular type of carbon steel flat product produced, [it] would have been faced with creating an absurdly large or even infinite number of classes or kinds [of merchandise]."[2] In other words, if Commerce addressed short supply under current law, it would be forced to conduct multiple investigations because each class or kind of merchandise must be separately investigated. Therefore, contrary to statements made by Assistant Secretary Esserman, current law prevents Commerce from fairly addressing concerns regarding short supply.

This problem cannot be solved by the International Trade Commission. In injury investigations, the relevant domestic industry constitutes domestic producers of a "like product." A "like product" is "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[3] In the case involving seat belt retractor steel imported from Germany, the Commission could only consider "the asserted grounds for distinguishing various products in the context of the 'continuum' nature of products" in the like product grouping. Like Commerce's class or kind of merchandise determinations,

> the Commission traditionally has been reluctant to fragment its like product definitions where a continuum of products exists. To do so would result in a large number of separate, specialized steel like products characterized by distinct metallurgy, end uses, and customer perceptions, and would ignore the need to identify "clear dividing lines" between potential separate like products.[4]

As a result, the Commission found that seat belt retractor steel did not constitute a like product separate from the cold-rolled steel subject to the investigation. American industry in need of this steel got caught paying antidumping duties.

As they now stand, the antidumping and countervailing duty laws blatantly disregard the economic cost borne by American companies that cannot find American-made products. Once an imported product falls within the broad parameters of an investigation, the fact that it may be dedicated to a specific and unique use matters little under current law. "[P]etitioners are not required to manufacture every product within the like product designation . . . and the statute does not require the Department to consider the domestic availability of a particular product within the scope when considering a scope exclusion request."[5] Agency practice thus directly contradicts arguments advanced by Assistant Secretary Esserman. Current law actually denies the Commission and Commerce the necessary flexibility to grant a remedy for the industrial users suffering from short supply, and Congress should fix it.

II. Changed Circumstances Reviews Do Not Provide A Proper Forum For Issues Of Short Supply.

Absent "good cause," final determinations or suspension agreements cannot be reviewed for changed circumstances until two years after their publication.[6] Changed circumstances reviews thus, by definition, cannot provide the prompt relief expected from H.R. 2822. But even if Congress removed the two year restriction, it is evident from agency practice that changed circumstances reviews will never be able to adequately address questions of short supply.

First, Commerce and the Commission have seldom conducted, much less initiated, changed circumstances reviews. That is not because companies have not tried. To prove changed circumstances so the Commission will revoke an antidumping duty order, an interested party must demonstrate:

(1) there has been a significant change in the circumstances existing at the time of the original investigation;

(2) that those changed circumstances were not the natural and direct result of the imposition of the antidumping duty order; and

(3) that the changed circumstances indicate that revocation of the order is not likely to lead to continuation or recurrence of material injury to the domestic industry in the reasonable foreseeable future.

In other words, the burden of proof necessary to show changed circumstances is so high, failure is all but guaranteed.[7]

The case involving fish netting of manmade fibers from Japan shows just how impossible it is to get the Commission to even consider changed circumstances. The Commission rejected the first request for partial revocation of the antidumping duty order covering salmon gill fish netting in March 1982.[8] Even though no established salmon gill fish netting industry existed in the United States at that time, the Commission found that Nylon Net Co. had made substantial investments in the development of a marketable product. The Commission unanimously determined that the possible establishment of a U.S. industry would be materially retarded by reason of imports of salmon gill fish netting of manmade fibers if the order were to be modified or revoked.

The Commission instituted a second changed circumstances review when it learned the company that had planned to manufacture the thread for Nylon Net's salmon gill fish nets, had decided not to produce the thread.[9] This time, however, the Commission found that Nichimo Northwest, a Japanese transplant, qualified as a domestic producer. As a result, the Commission in June 1983 held that a U.S. industry would be materially injured, by reason of imports of salmon gill fish netting of manmade fibers from Japan, if the order were to be modified or revoked.

Finally, in December 1986, the Commission revoked the antidumping duty on fish netting of manmade fibers from Japan as regards salmon gill fish netting[10] The main reason for the Commission's decision -- after almost four years petitioners finally decided not to oppose revocation. (The Commission even noted that the Nylon Net Co. was only interested in producing products which are established and profitable and that salmon gill fish netting was not such a product.) There were other reasons, too,[11] but if petitioners had decided again to oppose revocation, it is likely the Commission would have continued to ignore evidence of short supply and refused to revoke the order.

Evidence about domestic availability has received no better hearing at Commerce. The two changed circumstances reviews involving carbon steel plate and steel rail from Canada cited by Assistant Secretary Esserman in her letter did not revoke duties based on domestic unavailability.[12] Rather, they turned on the domestic producers' lack of interest in retaining antidumping duties. Current law thus gives real consideration to the problem of short supply only to the extent allowed by petitioners.

III. Sunset Reviews Provide No Effective Relief.

The newly authorized sunset reviews provide no short supply relief. Sunset reviews take place every five years, so they cannot provide the prompt relief expected from H.R. 2822. In addition, revocation of antidumping or countervailing duty orders pursuant to a sunset review will be quite difficult.

The Commission generally must determine if revocation of an antidumping or countervailing duty order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.[13] This standard differs from, and is more onerous than, the standards used by the Commission in its original finding of material injury or threat of material injury: "[U]nder the likelihood standard, the Commission will engage in a counter-factual analysis: it must decide the likely impact in the reasonably foreseeable future of an important

change in the status quo -- the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports."[14] In making this determination, the Commission will consider several factors. Domestic availability of the product under the order will not be one of the factors considered.[15]

Commerce generally must determine if revocation would be likely to lead to continuation or recurrence of sales of the subject merchandise at less than fair value for antidumping duty orders, or a countervailable subsidy for countervailing duty orders.[16] Once again, domestic availability of the product under the order will not be one of the factors considered for sunset.

IV. Conclusion

We are not alone in our complaint. About one year ago, one of the largest U.S. corporation, General Motors Corporation, also complained about the lack of consideration domestic availability of products receives during antidumping and countervailing duty proceedings.[17] According to GM, domestic unavailability of certain products captured by antidumping and countervailing duty orders has increased prices, disrupted just-in-time inventory systems, and imposed costs from schedule changes made to accommodate unpredictable supply.

> GM is unaware of any instance in which the Department has in fact considered lack of domestic availability in an AD/CVD proceeding. Moreover, industrial users currently are not afforded a meaningful opportunity to comment on the domestic availability of a product in AD/CVD proceedings, despite the fact that they are directly affected by the Department's determinations and often are in the best position to assess domestic availability.[18]

GM said it best: Addressing lack of domestic availability "would in no way harm the petitioning domestic industry because the provision takes effect only where the domestic industry cannot supply the product, in which case it has no legitimate competitive or other interest in seeing AD/CVD duties maintained."[19]

The suggestions which Assistant Secretary Esserman advanced as a cornucopia of relief for industrial users amount to little more than rhetoric. None of the provisions cited by the Assistant Secretary provide the flexibility necessary to remedy the temporary condition of short supply. Industrial users of products in short supply require a provision tailored to special circumstances. Such a provision will strike the balance between maintaining the integrity of the law and providing relief to industrial users of these products. Without such relief, valuable American jobs are exported to maintain global competitiveness, without any corresponding gains in jobs in the petitioning industry. We strongly support the temporary duty suspension provision introduced by Congressman Crane and urge its adoption.

Respectfully submitted,

Robert A. Lipstein
Matthew P. Jaffe
Grace W. Lawson
Lipstein, Jaffe & Lawson, L.L.P.

Endnotes:

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[1] Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Steel Flat Products From Argentina, 58 Fed. Reg. 37,062, 37,076 (July 9, 1993). The Court of International Trade confirmed Commerce's decision. Kern-Liebers USA, Inc. v. United States, 881 F. Supp. 618 (1995).

[2] Id.

[3] 19 U.S.C. § 1677(10).

[4] Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, USITC Pub. 2664, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353, and Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619, vol. I, at 11-12 (April 1993) (footnotes deleted). The Court of International Trade confirmed the Commission's decision. Kern-Liebers USA, Inc. v. United States, Consol. Court No. 93-09-00552, 1995 Ct. Intl. Trade LEXIS 10 (1995).

Similarly, in the case of antifriction roller bearings, several bearings producers, many with facilities located in the United States, argued that bearings they imported to fill their product lines should be excluded from the countervailing duty determination because domestic production did not exist. The Commission concluded that parties to an injury investigation were not permitted to seek review of the Commerce's scope determination. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From The Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Investigation Nos. 303-TA-19 and 20 (Final); Investigations Nos. 731-TA-391-399 (Final) 1989 (May 1989).

[5] Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Steel Flat Products From Argentina, 58 Fed. Reg. 37,062, 37,076 (July 9, 1993).

[6] 19 U.S.C. § 1675(b)(1).

[7] The decision of the Commission to undertake such a review is a threshold question "made only when it reasonably appears that positive evidence adduced by the petitioner together with other evidence gathered by the Commission leads the ITC to believe that there are changed circumstances sufficient to warrant review." Avesta AB v. United States, 689 F. Supp. 1173, 1181 (Ct. Int'l Trade 1988).

[8] Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-5, Pub. 1234 (March 1982).

[9] Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-7, Pub. 1387 (June 1983).

[10] Salmon Gill Fish Netting of Manmade Fibers from Japan, Inv. No. 751-TA-11, Pub. 1921 (Dec. 1986).

[11] Id. Other reasons included (1) potential producers failed to demonstrate they had made a substantial commitment to manufacture salmon gill fish netting in the United States and (2) the last remaining domestic producer operated in a small, separate niche in the marketplace which was unlikely to be affected by possible price reductions or increased imports of the Japanese product.

[12] Certain Cut-to-Length Carbon Steel Plate from Canada: Initiation and Preliminary Results of Changed Circumstance Antidumping Duty and Administrative Review, and Intent To Revoke Order in Part, 60 Fed. Reg. 61,536 (November 30, 1995) (based on the fact that

petitioners in the case submitted a letter indicating they had no interest in maintaining the orders on the relevant steel, Commerce partially revoked the order); New Steel Rail, Except Light Rail, From Canada: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty and Countervailing Duty Administrative Reviews, and Intent To Revoke Orders in Part, 60 Fed. Reg. 61,538 (November 30, 1995) (based on the fact that petitioners in the case submitted a letter indicating they had no interest in maintaining the orders on the relevant steel rail, Commerce partially revoked the orders).

[13] 19 U.S.C. § 1675a(a)(1).

[14] Message from the President of the United States, Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 883-84 (1994); see 19 U.S.C. § 1675a(a)(5).

[15] 19 U.S.C. § 1675a(a)(1)(A).

[16] 19 U.S.C. §§ 1675a(b)(1), 1675a(c)(1).

[17] General Motors Corporation: Comments On Amendments To AD/CVD Regulations, **GATT Comments (DISK # 2)**, File: GATT24.EXE, published by The International Trade Administration of the Department of Commerce, February 8, 1995.

[18] Id.

[19] Id.

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March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
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Re: Short-Supply Bill (H.R. 2822)

Dear Mr. Moseley:

On behalf of Magnesium Corporation of America ("Magcorp") and in accordance with the Subcommittee on Trade's request for written comments on miscellaneous trade proposals, we hereby submit comments on H.R. 2822.

Magcorp is a medium-sized, highly competitive producer of primary magnesium, selling more than 30 different sizes, shapes, and weights of high quality pure magnesium and magnesium alloy products into virtually all of magnesium's end markets. Magcorp employs over 500 people, all of whom are ultimately dependent on the production and sale of primary magnesium for their livelihood. Magcorp's production facility is located in Rowley, Utah.

Unfairly traded imports of magnesium from Canada, the People's Republic of China ("PRC"), the Russian Federation ("Russia") and Ukraine have caused significant injury to the U.S. magnesium industry. Those unfairly traded imports forced the shut down of domestic production capacity, resulted in significant layoffs of American workers, and deprived the American industry of the revenues needed to maintain competitiveness in the world marketplace. As a result, Magcorp, on behalf of the U.S. magnesium industry, filed antidumping cases against unfairly traded imports of magnesium from the PRC, Russia and Ukraine and antidumping and countervailing duty cases against unfairly traded imports of magnesium from Canada. The Department of Commerce determined that magnesium imported from these countries was unfairly traded, and the International Trade Commission affirmed the readily apparent conclusion that these unfairly traded imports had caused injury to the U.S. magnesium industry.

As a result of the imposition of antidumping and countervailing duties and the resulting increase in the market price for magnesium, Magcorp is just beginning to recover from the injury inflicted by the unfairly traded imports. Nonetheless, the millions of dollars in lost revenues, delays in production process improvements, and the forced permanent closure of existing domestic capacity that resulted from the unfairly traded imports will not be recovered in the near term. Whether Magcorp can sustain this recovery over time depends, in large part, on the relief from unfairly traded imports that is currently afforded by the antidumping and countervailing duty orders on magnesium. H.R. 2822 would undermine the certainty and effectiveness of that relief because it would permit the importation of unfairly traded merchandise without the imposition of offsetting antidumping and countervailing duties. In addition, H.R. 2822 would reward those foreign companies whose unfairly traded products have cost Americans their jobs, their facilities, and their ability to compete in the global marketplace.

Magcorp is an efficient and cost-effective producer that does not hesitate to compete globally. But it cannot and should not be required to compete against unfairly traded imports. This bill rewards foreign companies if they are able to drive American industry out of business or, as in the magnesium industry, force closure of productive capacity and then utilize any resulting shortages as the basis to avoid the duties designed to offset their unfair trading practices. Such a result serves no legitimate trade or competitive interest.

Thank you for your consideration of these comments.

Respectfully submitted,

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Counsel for
Magnesium Corporation of America

COMMENTS OF MICHELIN NORTH AMERICA
ON H.R. 2822
SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS

March 1, 1996

These comments are submitted on behalf of Michelin North America, in support of your temporary duty suspension bill (HR 2822). This bill would enhance the competitiveness of U.S. companies that rely on imported components. It would not, in anyway, undermine the effectiveness of U.S. trade laws.

Michelin is one of the largest tire manufacturers in the United States, with tire manufacturing plants in South Carolina, Alabama, Indiana, and Oklahoma. We make tires of all descriptions, from passenger car tires to airplane tires. We employ approximately 16,000 workers in our plants.

Michelin has experienced, first-hand, the need for a temporary duty suspension provision. Two years ago, our competitive position was very nearly undermined by exposure to antidumping duties for steel wire rod that we could not get from domestic producers. While, fortunately, the antidumping investigation on steel wire rod was eventually terminated, participation in the case made clear to us the extent to which U.S. domestic manufacturers can be needlessly harmed by broad antidumping cases that cover merchandise that is not available domestically. The case also made clear to us that there were really no effective mechanisms under current law to address such circumstances.

One of the chief components in our tires is steel to make tire cord. We purchase steel in wire rod form, and draw the rod into wire for weaving tire cord. Our costs and competitive position depend on our being able to utilize wire rod effectively and efficiently. A critical element in our use of wire rod is to ensure that it does not break during the process of making wire and tire cord. In some cases, the only rod that meets our specifications is imported.

If antidumping duties had been imposed on our imports, our operation would have been placed in a very difficult situation. The fact that we could not obtain the wire rod we needed from domestic sources meant that we would have been unable to compete with exports. We would have had to import wire rod that was subject to antidumping duties, which would have increased our costs and made us uncompetitive vis-a-vis foreign tire producers. Nor would we have been able to compete with U.S. domestic manufacturers because one of our major competitors negotiated an exclusion from the petition for the wire rod it needed, while the wire rod Michelin needed was not excluded.

A temporary duty suspension provision would give us a chance in a future trade case to approach the Commerce Department for a temporary exclusion of our product from duties, so long as we could show that the products we need are unavailable domestically. Other procedures under the trade laws do not allow for *temporary* suspension, meaning that if a domestic producer *ever* intends to make a product, it would oppose a permanent exclusion. In the absence of an exclusion, however, we would be forced to pay exorbitant duties for wire rod, or to relocate our wire-producing facilities to other countries.

We think that H.R. 2822 is a modest, but effective provision. All the temporary duty suspension bill does is to provide temporary relief to downstream U.S. users in situations where an antidumping or countervailing duty order provides no benefit to upstream producers because they cannot supply the needed merchandise.

H.R. 2822 is an important priority for us. We hope we can count on the Committee's support.

Comments of Micron Technology, Inc.
in Opposition to H.R. 2822
Temporary Duty Suspension Legislation

Submitted to the Subcommittee on Trade
House Committee on Ways and Means

March 1, 1996

Micron Technology, Inc. ("Micron"), wishes to take this opportunity to submit comments in opposition to H.R. 2822, a bill that would permit the Department of Commerce to temporarily suspend antidumping or countervailing duties when "prevailing market conditions related to the availability of the product in the United States make imposition of duties inappropriate". In brief, Micron believes that this provision would severely undermine the efficacy of the U.S. antidumping law. It would create enormous discretion to suspend duties, resulting in the complete politicization of trade cases. It would undermine the basic function of the dumping law -- i.e., to send fair pricing signals to manufacturers and capital markets. It would actually reward predatory dumpers. And, finally, it is not needed to address the problems it is purportedly intended to cure. This provision must not be adopted.

Micron is a leading manufacturer of dynamic random access memories ("DRAMs"), and static random access memories ("SRAMs"). These products represent the main memory in a variety of electronics products including personal computers. Micron also produces other semiconductor parts, board-level products and system-level products. Micron's design, wafer fabrication, assembly, test and marketing functions are located at its Boise, Idaho facilities, where Micron employs approximately 6,000 people. Micron is also building a fabrication facility in Lehi, Utah.

Micron owes its continued existence in the United States to the antidumping law. Micron has successfully employed the law on several occasions, first against the Japanese and later against the Korean semiconductor producers, to defend itself against unfair foreign pricing that threatened its U.S. operations and drove its U.S. competitors either out of business or into offshore production. Micron is proud of its status as one of the few remaining U.S.-owned companies that manufactures and assembles DRAMs entirely in the United States. The antidumping law played the critical role in helping ward off predatory pricing, and afforded Micron the opportunity and ability to reinvest in its technology, its people, and its future.

The semiconductor industry, and the DRAM industry in particular, is especially sensitive to price volatility. Pricing not only impacts a company's cash flow and profit margins, but also directly affects its ability to reinvest in new technology and equipment, hire and train skilled personnel, and expand capacity. In a highly capital intensive industry such as semiconductors, predatory unfair pricing can be fatal, as was seen in the 1980s when seven out of nine U.S. DRAM producers were forced out of business by

Japanese producers. Although the semiconductor industry has experienced unprecedented demand over the past several years, recently, price declines have begun to accelerate. This softening is exacerbated by massive growth in chip production capacity, particularly in Korea and Taiwan. The continued health of the U.S. semiconductor industry depends on the existence of a dumping law that is strong and predictable.

As the Committee is well aware, the issue of whether or not U.S. antidumping and countervailing duty laws should contain a short supply provision was considered and rejected by both Houses of Congress only one and a half years ago. The legislation implementing the changes in the WTO Antidumping Code contained many new provisions, many of which weakened the law from the standpoint of Micron and other American companies who use those laws. Moreover, many of the provisions advocated by American companies, such as Duty as a Cost and Compensation, were not included in the new law. Overall, however, a rough balance was struck, and the legislation was adopted. Given that the U.S. dumping law underwent a thorough re-examination in both the House and Senate such a short time ago, it is entirely premature to reopen the law now. The new provisions adopted by Congress have not had sufficient time to be tested, nor has the Commerce Department adopted final regulations implementing these provisions. It is also important to note that there is nothing in the WTO Antidumping or Countervailing Duty Codes that requires, or even mentions, a measure like the Temporary Duty Suspension provision.

The Temporary Duty Suspension provision implies that dumping orders create shortages of products. This is simply untrue. The imposition of an order does not affect the availability of a product. An importer always has the option of buying from foreign producers, even those subject to an order; it must simply buy at a non-dumped price. Proponents of short supply argue that dumping duties are so high as to restrict supply, and compare the level of duties under U.S. dumping law to Smoot-Hawley tariffs. The comparison is not a valid one, but in those cases where high antidumping duties were found in initial investigations, it was often because respondents did not respond or were uncooperative in investigations, resulting in the use of "best information available". The revised Antidumping Code, however, dramatically changed the circumstances under which "best information available" can be used; and in fact the use of best information available by the Commerce Department has dropped sharply since the new law went into effect. This has led to a significant drop in margin levels, since respondents are now given every possible chance to cooperate. Moreover, while duty deposit levels in antidumping investigations might, in some instances, be high, our prospective duty system always gives foreign respondents an opportunity to eliminate the duties if they stop dumping. A review of the level of margins in administrative reviews, in fact, shows very low dumping margins.

The Temporary Duty Suspension provision would also give the Commerce Department broad and undefined discretion in deciding whether or not an order stays in place. The United States Congress domestically, and our trade negotiators internationally, have worked hard to make the antidumping law as transparent, objective

and predictable as possible. The Temporary Duty Suspension provision would, in essence, make the imposition of duties optional. In addition, the provision would undoubtedly lead to a total politicization of the proceedings. Those industries wielding the most influence in Washington would achieve the best outcomes. Small and medium-sized industries would be less likely to get the relief due them. Moreover, foreign policy considerations would likely dictate whether an order stays in place or is suspended. It is also extremely problematic that the Department of Commerce would be given such enormous discretion to suspend duties and that such suspension decisions would not even be subject to judicial review. It is both telling and important that the administering authority itself, the Commerce Department, is strongly opposed to being given the discretion permitted in the Temporary Duty Suspension provision.

While proponents of the Temporary Duty Suspension provision have worked hard to make it sound as benign as possible, it is really just the opposite. First, it would entirely short circuit the way the dumping law is intended to work. Often, industries that have been subjected to injurious dumping have curtailed production, or in some instances, may have ceased production of some product lines, because their costs restrained them from selling down to the dumped price. Once an antidumping order is in place, and prices return to normal levels, those same producers receive the proper pricing signals from the marketplace. They ramp up production in those products where they can be competitive, they re-enter product lines they may have left due to dumping -- U.S. investment is encouraged and more U.S. jobs are created.

Perhaps the most insidious thing about this proposal is that it would actually end up rewarding the most predacious sellers -- if a foreign producer forces competitors in the U.S. out of business, it will actually create the shortages that it will then be rewarded for by receiving a duty waiver. This is nonsensical. In considering the legitimacy of the Temporary Duty Suspension proposal, it must be kept in mind that it is not possible to get an antidumping order unless one can show that the industry in question has been suffering injury as a result of dumped imports for a three year period. A petitioning industry usually needs to show significant red ink -- lost jobs, lower sales, reduced investment. Thus, the industries that finally obtain an order (i.e., they have shown both dumping and injury), really do need relief. It is simply inappropriate to create a loophole in the law that would deny this relief.

It is also important to note that this provision is totally unnecessary to solve the problems its sponsors say that it is intended to address, i.e., those rare instances when an antidumping duty covers a product that no U.S. producer makes or has any intention of making. Under such circumstances, products not made here are often removed from the scope of an antidumping petition during the investigative stage of an antidumping case, and before an order goes into effect. If a product becomes subject to an order, but is not made here, it may be removed from the scope of an order through two other existing mechanisms: a scope determination or a changed circumstances review. In two recent changed circumstances decisions, Commerce removed specific products from an antidumping order based upon the fact that they were not produced in this country. (See,

New Steel Rail, Except Light Rail, From Canada, 60 Fed. Reg. 61538 (Dep't Comm. 1995)(Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Review and Intent to Revoke Order in Part), and Certain Cut to Length Carbon Steel Plate From Canada, 60 Fed. Reg. 61536 (Dep't Comm. 1995) (Initiation and Preliminary Results of Changed Circumstances Antidumping Administrative Review and Intent to Revoke Order in Part).

The Temporary Duty Suspension provision could also lead to substantial abuses. In the semiconductor industry, there can be very subtle and very technical differences between certain microelectronics devices. It would be very simple for an importer who wanted to continue to buy a chip at a dumped price to claim that the particular specifications of that dumped chip made it the only one it could use in making its own downstream products. By narrowly defining what it says it needs to have, an importer would have control over the issue of availability. The Commerce Department would also be put in the position of having to determine whether to take the importer's word, or whether another closely substitutable product would be sufficient in that application. This would create an administrative nightmare for the Commerce Department, and also open the door to the potential of "political influence." The Commerce Department could not possibly maintain the expertise to determine issues related to the substitutability of products across the hundreds or thousands of product lines covered by antidumping and countervailing duty orders.

The Temporary Duty Suspension Provision would also significantly increase the costs of bringing antidumping cases. Often years pass and hundreds of thousands of dollars (or more) are spent before U.S. producers can obtain relief from unfairly traded imports which hurt our industries. (Usually an industry has to have been suffering injury for some time before it can even make a showing of injury at the ITC.) It would be very unfair to U.S. producers who have made the commitment of time and resources to defend themselves from unfairly traded products, to then give the Department of Commerce complete discretion to suspend duties. The legal argumentation related to short supply petitions themselves would also be very expensive.

Finally, as a political matter, it is important for Congress to realize that the consensus in this country for expanding free trade agreements is based, in significant part, on the ability of our industries to seek recourse from unfairly traded and injurious imports under our trade laws. If Congress acts to weaken the trade laws, this consensus will deteriorate. We cannot expect to enter into free trade agreements *and* eliminate the dumping law at the same time.

For the reasons outlined above, Micron strongly opposes the adoption of H.R. 2822.

Office of the President

March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

On behalf of the National Farmers Union, I am writing to express our opposition to H.R. 2822, the Temporary Duty Suspension Act. The proposed legislation would severely weaken the effectiveness of U.S. Antidumping and Countervailing Duty Laws.

American farmers today produce and sell their products in a global, agricultural economy. However, we do not agree that any nation's agricultural producers should have their product valued at a globally-traded surplus price. Antidumping and countervailing duty laws are essential in order for the U.S. to respond to the dumping of goods priced at below fair market value into U.S. markets by other countries.

Neither the Department of Commerce, nor any other government agency, should have the authority to waive these important laws when unfairly priced goods enter our markets. As you well know, similar legislation was proposed and rejected by a bipartisan majority in both houses of Congress nearly two years ago. The Department of Commerce has publicly stated on repeated occasions that it does not want this authority because it does not need the publicity associated with this issue. Furthermore, the increased responsibility given to the Commerce Department under the Temporary Duty Suspension Act would challenge its already limited resources.

With the influx of agricultural products that are flooding into our country due to the North American Free Trade Agreement (NAFTA) and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), now is not the time to weaken the few remaining laws that prohibit dumping of unfairly priced commodities into U.S. markets.

Sincerely,

Leland Swenson

Leland Swenson
President

PPG Industries, Inc.
One PPG Place Pittsburgh, Pennsylvania 15272 USA Telephone: (412) 434-2788 Facsimile: (412) 434-2545

John C. Reichenbach, Jr.
Director
Government Affairs

March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington DC 20515

Re: Comments on Miscellaneous Trade Proposals (TR-17)

Dear Mr. Moseley:

PPG Industries, Inc. submits these comments in opposition to H.R. 2822, among the miscellaneous trade proposals covered by Advisory Number TR-17 of the Committee on Ways and Means, Subcommittee on Trade. PPG is a U.S. producer of flat glass, fiberglass, chemicals, and coatings and resins products, and has been the petitioner, or otherwise participated, in numerous proceedings before the ITC, including proceedings that resulted in the issuance of antidumping and countervailing duty orders on glass products (sheet, plate and float glass).

Advisory TR-17 describes the aim of H.R. 2822 as to "provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year if it determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate."

This bill is simply wrong headed. PPG is concerned that there may be superficial appeal to the notion that dumping and subsidies might be ignored when availability of certain product sub-classes is limited, or to the notion that failing to insist upon offsetting duties for a limited time only is somehow a good thing. To the contrary, if enacted, H.R. 2822 would severely undermine the U.S. goal of preventing, and providing relief to U.S. industries injured by, unfair import competition. Moreover, as present laws do not restrict supply, there can be no shortage.

Thanks to relief provided under various antidumping and countervailing duty orders, the antidumping and countervailing duty orders on glass imports (with respect to which PPG was one of the petitioners) are no longer in place. PPG is concerned that H.R. 2822 will reward dumpers who most seriously harm U.S. companies, will reduce the market-price correction necessary to permit companies to recover from injury, and will deny domestic producers the market signals to decide whether to reenter or expand production. Through Title VII relief, companies like PPG have been able to turn from material injury to strength and international competitiveness. The fair trade intended to follow such relief will certainly be less likely to materialize if foreign interests are permitted to dump on individual product categories.

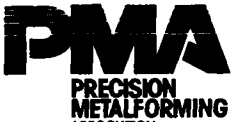
PPG asks that, instead of lessening antidumping and countervailing duty relief, U.S. lawmakers focus on making it easier for U.S. producers to cause conditions of fair trade to obtain in this market and, once obtained, harder to evade or avoid. Stopping unfair trade practices at their inception will reduce the instances where price levels in the market become artificially low. Shifting the emphasis to enforcing the trade laws to provide meaningful relief to industries injured or threatened with injury will reduce the situations in which domestic producers are destroyed, forced to lay off workers, or to reduce salaries, capacity, production and prices. Greater relief, not less, will assure greater availability of local supply.

In conclusion, purchasers should not be permitted to perceive artificial price advantages flowing from dumping or subsidies as a "right." Any new trade legislation should focus on providing prompt and effective relief. H.R. 2822 does not. It should be opposed.

PPG is grateful for this opportunity to submit written comments.

Sincerely,

John C. Reichenbach, Jr.



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COMMENTS OF PRECISION METALFORMING ASSOCIATION
ON H.R. 2822
SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS

March 1, 1996

These comments are submitted on behalf of the Precision Metalforming Association ("PMA"). PMA represents some 1400 members throughout the United States. Our member companies are American manufacturers that use flat-rolled metal, especially sheet steel, to make thousands of different products that can be found in America's homes, farms and factories. A significant percentage of PMA members' production is for the automotive and auto parts industry. Our industry employs over 300,000 workers. We consume about one-fourth of the sheet steel that is consumed in North America.

Many of our members rely on imported inputs and components, for the very simple reason that domestic producers do not make all of the thousands of products that domestic users need. PMA's members, and the American economy, therefore need steel imports to survive. Even with the advent of new flat-rolled production by minimills, there is no foreseeable prospect that domestic production will meet domestic demand.

Because of this reliance on imported inputs and components, we strongly support Representative Crane's bill, HR 2822. This is a very modest bill that would give authority to the Commerce Department to suspend the imposition of antidumping or countervailing duties temporarily on a limited quantity of a particular product needed by the American industry when users are effectively unable to obtain that product from U.S. producers. In such situations, no U.S. producer benefits from the protection of antidumping laws and downstream U.S. producers would be harmed. This bill does not undermine the effectiveness of the antidumping law or the protection that this law affords to U.S. producers and workers. In fact, the most surprising aspect to the controversy over temporary duty suspension is that there is controversy at all.

Under current law, two elements must be established before antidumping or countervailing duties may be imposed. First, there must be a finding by the Commerce Department that the merchandise is dumped or subsidized. Second, there must be a finding by the International Trade Commission that the imported merchandise injures the U.S. domestic industry. It is clear that dumping or subsidization without injury is not illegal, or subject to any duties. When duties are imposed in the absence of injury (such as when there is no domestic production of particular products), the losers are American manufacturers and their employees, and the winners are our foreign competitors and their workers.

The reason a temporary duty suspension provision is necessary is because the antidumping and countervailing duty laws are blunt instruments. Commerce's dumping and subsidy analyses and the International Trade Commission's injury analyses are based on review of a large category of products. As a result, any antidumping or countervailing duty order may well include products that are not made in the United States. Clearly, imposing dumping and countervailing duties on products that are not available from domestic producers does not reduce injury to any domestic industry and may well harm downstream users who must import those products. Chairman Crane's proposal would authorize the Commerce Department to fine-tune the application of these laws in such situations.

Comments on H.R. 2822

The existing antidumping and countervailing duty orders on steel are very broad and include hundreds of products. Domestic producers simply cannot make all of the products that domestic users need. Steel is not a fungible product--often, the specifications called for by a steel user must be very exact, and the user cannot accept material that deviates from the specifications (usually because of requirements that the user's customer imposes). Where particular products are not available domestically, the application of the dumping and countervailing duty laws can severely undermine the competitive position of PMA's members.

For example, one of our members may lose important business because the type of steel he needs is subject to antidumping and countervailing duty orders. This member has repeatedly tried to source this steel from domestic sources but has been unable to obtain steel with the type of surface that his customer requires. Assuming that this member is able to import this particular type of steel (which is often difficult because antidumping and countervailing duty orders often have a chilling effect on trade) the cost for this steel will be significantly increased due to the orders. This will make it very difficult for this member to compete with foreign producers of the stamped product who do not have to pay such duties. In this case, the trade cases hurt a steel user, but do not help domestic steel producers. If the customer turns to a foreign supplier, the only loser will be our member.

These instances of lack of supply are likely to increase in the future. With modern production methods for steel (e.g., continuous casting) and an ever-increasing list of unique specifications for steel products, users may find more and more that foreign sources are the only ones available for the products they need. If U.S. producers cannot make what American industry needs, why impose high tariffs on those goods? Such tariffs do not help domestic steel producers, at least not as long as they do not make the products needed by steel users in this country.

We think that the approach embodied in the Crane legislation is a modest solution to this problem. It does not reopen the trade laws; it makes no change in how these cases are brought, how they are investigated or how the orders, once entered, are administered. All it does is create the possibility for action in cases where a needed product is unavailable from a domestic producer. It allows the Commerce Department to consider those situations that are brought to the Department's attention, and to act on those requests, either granting or denying them. All parties will have a chance to state their views, and the Commerce Department will make the final decision. The bill will add one important tool, that is the ability to approve temporary relief from the imposition of antidumping and countervailing duties.

Some have argued that H.R. 2822 is unnecessary because there are existing mechanisms for removing particular products from the scope of an antidumping or countervailing duty investigation or order. There may be mechanisms, but all of these mechanisms result in permanent removal of a product from the scope of an order. By contrast, H.R. 2822 would allow the Commerce Department to temporarily remove a product from the scope of an order. Thus, H.R. 2822 is, in fact, a more modest approach than the approaches available under current law. While permanent relief removes domestic producers' incentive to meet domestic demand, the temporary relief provided by H.R. 2822 will actually encourage the domestic industry to develop new products since it will enable U.S. downstream producers (such as PMA members) to maintain their business in the United States until the U.S. industry begins to manufacture the needed input product.

PMA urges the Committee to approve H.R. 2822 promptly.

STATEMENT OF THE PRO TRADE GROUP ON PROPOSED U.S. INTERNATIONAL TRADE COMMISSION REFORMS (TR–16) AND MISCELLANEOUS TRADE PROPOSALS (TR–17)

OVERVIEW

This comment is designed to address a number of issues of special concern to the Pro Trade Group (PTG) and its participants. It is intended, in part, to serve as a supplement to our December 21, 1995 submission to the U.S. International Trade Commission on possible changes to its procedures. It also is designed to compliment the March 1, 1996 technical comments of the Fair Trade Forum, a project and subdivision of the PTG, as well as those of the Temporary Duty Suspension Group, which comments we endorse and incorporate by reference here.

We commend the Subcommittee for considering the efficiency and effectiveness of U.S. International Trade Commission procedures, as well as possible changes to our antidumping, countervailing duty and safeguards laws.

As to our views, generally we believe that the Committee should, in developing its analysis restrict proposed changes to those which faithfully implement the Uruguay Round (UR) Agreement and resist efforts to transform these laws and procedures into punitive, trade restricting barriers. During the pendency of Congressional consideration of UR legislation, over 100 companies and trade associations signed a letter to Amb. Kantor, that we submitted to the Commission last April, which sets forth our goals and concerns regarding the enactment of UR implementing legislation. We have the same goals and concerns regarding the possible changes now being considered. As to USITC procedures, a number of our concerns were reflected in comments we filed in our December 21, 1995, comments to the Commission. Both of these documents are included here as Appendix 1.

The PTG is a broad coalition of U.S. companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting polices which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

Proposed Changes to U.S. Safeguards Law (H.R. 2795)

We commend the Committee's decision to seek comments on H.R. 2795, a bill which would change the U.S. safeguards Law.

Under this legislation, the United States would unilaterally change the long-accepted global definition of a "domestic industry" to recognize separate "seasonal industries." This is a sweeping change that would enable certain industries to obtain import restrictions despite the fact that their case has already been rejected by the U.S. International Trade Commission. The recent tomato case is an example.

Existing trade law has served our economy and U.S. business interests well. As the Committee considers this legislation, we urge you to remember that it is unwise to make substantial changes to our trade laws where a very strong case has not been made that that law is ineffective.

Although this legislation is driven by narrow interests, its negative ramifications for U.S. trade are broad. The passage of H.R. 2795 would put U.S. trade interests in immediate jeopardy because it violates the principles of international trade commitments made by the U.S. within NAFTA and the World Trade Organization. As a result, in addition to Mexico, the actual target of this legislation, 15 countries have already put the U.S. on notice on this matter. If H.R. 2795 or similar legislation becomes law, we would invite these countries and more to retaliate against U.S. exports. We also would invite a challenge before the WTO. We enclose as Appendix 2 an analysis of this legislation in terms of its possible violation of both the WTO Safeguards Agreement and the GATT 1994, and possible compensation issues which might arise against the United States if the legislation were enacted and utilized.

Passage of H.R. 2795 would signal that Congress has embraced protectionist legislation during this election year. As you know, the United States is the world's largest exporter, with exports accounting for 50 percent of our domestic economic growth in the last five years. We must not jeopardize this growth, and the jobs it creates.

Current political rhetoric in some circles has portrayed international trade agreements as enemies of economic prosperity. Nothing could be further from the truth. International trade agreements (e.g., WTO and NAFTA) assure that we can sell into foreign markets. They open foreign markets to U.S. exports and they give us levers to assure that these markets remain open. But if the United States fails to live up to its trade commitments by passing H.R. 2795 or similar legislation, we will do the reverse. In short, we will encourage others to renege on their commitments to us.

Temporary Duty Suspension

The PTG strongly supports H.R. 2822, a bill introduced by Chairman Crane which would permit the U.S. Department of Commerce, under conditions of short supply, to temporarily suspend antidumping and countervailing duties. This could occur with respect to specific products needed by American firms when these products are unavailable from U.S. producers. We do not believe that this legislation would interfere with the effectiveness of U.S. trade laws. Rather, we feel it would enhance U.S. competitiveness.

This issue is addressed in greater detail in submissions being filed with the Committee by the Fair Trade Forum and the Temporary Duty Suspension Group, both of which the PTG concurs in and aligns with.

Amendments to USITC Procedures

We note that the Committee's Advisory not only addressed specific proposed changes to the procedures of the U.S. International Trade Commission but also invited comments on other possible reforms. Accordingly, we address here two of the proposals covered in the Subcommittee's Advisory, as well as a series of other proposed changes. The first two include. (a) changes to the Commission's composition and voting structure; and (b) possible application of the Government in Sunshine Act to certain USITC meetings. In addition, we also invite the Committee's attention to certain reforms to USITC procedures which we proposed in our 12/21/95 submission to the USITC and which we enclose here as Appendix 2.

Commission Composition and Voting Structure

As noted, we concur with, and incorporate by reference, the detailed comments on this subject being filed by the Fair Trade Forum. In essence, we believe that a legitimate goal of this Committee is to seek ways to facilitate a more collaborative and deliberative process by the USITC in reaching injury determinations. We believe that this could and would be facilitated by several reforms, including:

(a) provision for an odd, as opposed to even, number of commissioners; and

(b) elimination of the current procedure wherein the USITC votes are deemed to constitute affirmative injury determinations.

Possible Application to the USITC of the Sunshine Act

Furthermore, we support the application of the Sunshine Act to meetings of USITC Commissioners for the purpose of discussing USITC determinations in antidumping and countervailing duty cases. As indicated, we concur with, and incorporate by reference here, the more detailed discussion of this issue in the comments being filed by the Fair Trade Forum. Essentially, we believe that collective or collaborative USITC determinations would result in more fully reasoned decisions which better protect the public interest.

Possible Changes in USITC Regulations

In addition, as noted in our 12/21/95 submission to the USITC, we recommend a number of other changes to USITC procedures. These include possible changes related to the following topics:

(a) filing of petitions (service, content and completeness requirements);

(b) determination of petitioner's standing;

(c) procedural rights of consumers and industrial users;

(d) disclosure of business proprietary information under APO;

(e) producer questionnaires;

(f) verifications;

(g) use of "facts otherwise available";

(h) possible investigative activity between preliminary and final determinations;

(i) prehearing briefs;

(j) institution of final investigations; and

(k) final comment procedures.

These concerns relate to the USITC's ongoing effort to develop implementing regulations related to changes in U.S. antidumping and subsidy law. Obviously, this is an extraordinarily complex exercise. We believe that our trading partners are watching this exercise closely and urge the Subcommittee, in its oversight of these issues, to help ensure that the USITC develops regulations that do not reopen old debates, or distort the intent of the UR Agreement.

Edward J. Black

Edward J. Black
President, Computer & Communications
Industry Association
Chairman, Pro Trade Group

APPENDIX 1

TEXT OF 12/21/95 SUBMISSION TO U.S. INTERNATIONAL TRADE COMMISSION

OVERVIEW

This comment is designed to highlight a number of issues of special concern to the Pro Trade Group (PTG) and its members. It is intended to serve as a supplement to our April 18, 1995 comments filed with the Commission and as a compliment to the December 21, 1995 technical comments of the Fair Trade Forum, a project and subdivision of the PTG, both of which comments our incorporate by reference.

We commend the Commission for its effort to improve the effectiveness and efficiency of its procedures for conducting antidumping and countervailing duty investigations and reviews. As to our views, generally we believe that the Commission should, in developing its implementing regulations, attempt to faithfully implement the Uruguay Round (UR) Agreement and resist efforts to produce implementing regulations that would transform these laws into punitive, trade restricting barriers. Over 100 companies and trade associations signed a letter to Amb. Kantor, which we submitted to the Commission last April, which sets forth our goals and concerns regarding the enactment of UR implementing legislation. A copy is enclosed as Appendix 1. We have the same goals and concerns regarding the development of implementing regulations. A number of our concerns were reflected in comments we filed on April 3, 1995 in comments to the U.S. Department of Commerce (DOC), and in our April 18, 1995, comments to the Commission, on this subject, which are available upon request and incorporated by reference here.

The PTG is a broad coalition of U.S. companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1986 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988 and played an equally active role in the consideration and enactment of UR implementing legislation. We are committed to helping develop and implement constructive, trade expanding policies, laws and regulations. The positions of the PTG represent a consensus view although PTG participants may have varying views on particular issues.

The Commission Should Recognize the Implications for U.S. Exporters of Its Regulations and Practice

With respect to both the Commission's and DOC's regulations, we strongly endorse the key themes in the comments submitted to DOC on Feb. 3, 1995 by another PTG participant, Cargill, Inc. In that submission, Cargill called on DOC, at p 3, to:

> "take into consideration the impact of U.S. laws, regulations and practices on U.S. exports as well as on U.S. imports."

This comment noted, at p. 7, that the number of countries with antidumping laws has jumped from only 10 in 1980 to over 40 today. Further, it noted, at p. 12, that the proliferation of antidumping laws, and of antidumping investigations, in our export markets can act as a disincentive to U.S. exporters from participating in that market. It made the point that a foreign exporter to the U.S. market may have a greater incentive to respond to a U.S. antidumping or countervailing duty investigation than U.S. exporters facing foreign antidumping cases, because the market in that country is too small to justify the time and expense of responding. Noting that such cases can "act as a virtual, instantaneous barrier to U.S. goods," it concluded, at p. 14, as follows:

> "costs of such trade cases are a major concern to both big and small businesses, especially in low-margin, highly competitive trade.... antidumping cases could easily force U.S. exporters to abandon smaller markets."

The point is that, quite literally, the "world is watching" what U.S. authorities do in implementing these aspects of the UR. To the extent that the Commission develops regulations which reopen old debates, or distort the intent of the Agreement, it is reasonable to expect our trading partners to do the same. We strongly oppose any regulatory proposals which create this risk and call on the Commission to strictly construe the intent of the agreement in attempting to develop regulations pursuant to the U.S. implementing legislation.

Particular Issues of Concern

The Commission's effort to develop implementing regulations related to changes in U.S. antidumping and subsidy law is, obviously, an extraordinarily complex exercise. We make no effort here to comment on all the issues of concern to our members, or even to adjudge which issues are more important than others, because individual participants' interests vary. Nonetheless, given the foregoing goals of the PTG, and the fact that various proposals were made to the Commission last spring, from a variety of sources, we take particular note of certain issues where proposals have been made which appear to do violence to the criteria we set forth above for developing implementing regulations. As noted, the PTG filed comments with the Commission last April. We appreciate the fact that a number of our suggestions and comments were incorporated and/or referenced in the current Commission request for comments. Yet, we note that not all of the issues of concern to the PTG members were addressed in the current rulemaking notice. According, this comment is designed to reiterate our concerns and to add additional issues. This filing includes comments on the following topics:

- (a) filing of petitions
  - (i) service
  - (ii) contents and completeness;
- (b) determination of petitioner's standing;
- (c) procedural rights of consumers and industrial users;
- (d) disclosure of business proprietary information under APO;
- (e) producer questionnaires;
- (f) verifications;
- (g) use of "facts otherwise available";
- (h) investigative activity between preliminary and final investigations;
  - (i) issue preclusion
  - (ii) participation, timing & cost;
- (i) prehearing briefs;
- (j) institution of final investigations;
- (k) final comment procedures; and
- (l) short supply conditions and sunset provisions.

As discussed below, with respect to the Commission's 10/3/95 request for comments, we are particularly concerned about the proposal for continuous investigations and about the possibility of a requirement for a preclusive issues brief. We also reprise here our concerns regarding other issues not addressed in this notice.

The following sets forth some background as to the PTG's goals with respect to the UR implementing legislation. This may provide some context for our specific comments on regulatory proposals which we filed last April and the additional specific comments being filed concurrently by the Fair Trade Forum.

Filing of Petitions

Service

Given its importance and the shortness of Commission deadlines in preliminary investigations, service of the business proprietary version of the petition should be required within one calendar day, rather than two, as contained in Sec. 207.10(b) of the proposed regulations.

Contents and Completeness

In order to comply with Art. 5.2 of the Antidumping Code and Art. 11.2 of the Subsidies Code, the Commission's regulations should require the petition to include: (a) production data by volume and value; (b) identification of known exporters and/or foreign producers; (c) evolutionary import volume data; (d) specific, three-year piece data; and (e) data on import impact. Further, the regulations should specify the types of "reasonably available" documentation required to be filed with a petition. Also, the Commission's regulations should require that complete sets of a petition must be filed simultaneously with the Commission and the Commerce Department.

Petitioner Standing

As we indicated last fall in expressing our views to the Administration and the Congress regarding UR implementing legislation, and in our filing with the Commission last spring, the opportunity for potential respondents to comment on standing prior to initiation can be a meaningless opportunity. This is because without access to the confidential version of the petition prior to initiation, respondents may not have access to a meaningful description of how petitioners describe their standing. Accordingly, we believe that the Commission's regulations should require communication to the Department of Commerce, prior to its initiation, of all relevant information as to standing.

Procedural Rights for Consumers and Industrial Users

In communicating with the Administration and Congress regarding the implementing legislation last year, we urged that interested parties be defined to include industrial users, to ensure that they have access to APO information and that their participation in investigations and reviews is meaningful. The legislation (Sec. 227, p. 206) includes a general requirement for providing industrial users and certain consumer organizations an opportunity to submit relevant information. We believe that their opportunity for review of record information should be equivalent to parties in the investigation, as discussed more fully in Appendix 2 of our April, 1995 submission to the Commission. In short, we believe that the Commission's notice of institution should indicate that consumers and industrial users have the right to submit pertinent information to the Commission and to be considered under Sec. 201.11(a) of the regulations to be persons with a "proper reason for participating in the investigation."

Disclosure of Business Proprietary Information Under APO

The suggestion in proposed Sec. 207.7(2) of the proposed regulations to establish an additional deadline for application for access to certain business proprietary information under Administrative Protective Order for "other authorized applicants", seems both unnecessary and potentially confusing. We suggest that this proposal be dropped. Furthermore, we believe that counsel for consumer organizations and industrial users permitted to submit information to the Commission, under Sec. 201.11(a) of the Commission's regulations, should be authorized to make an application for access to business proprietary information under Administrative Protective Order.

Producer Questionnaires

In order to avoid exaggerated claims by domestic producers of potential production levels, hypothetical capacity should not be disconnected from historical data. The current definition of "full production capability" in the Commission's proposal appears to do just that. Accordingly, and consistent with past Commission practice, we recommend that producer questionnaires include the following instruction, which was contained in prior producer questionnaires: "[d]o not assume number of shifts and hours of plant operations under normal conditions to be higher than that attained by your plant at any time during the past 5 years."

Verifications

We believe that the Commission should continue its present practice of using its discretion to determine verification of importer and purchaser questionnaires on a case-by-case basis. The information provided in these questionnaires is generally straightforward and would not seem to justify more onerous verification requirements.

"Use of Facts Otherwise Available"

In communicating to the Administration and the Congress last year, we took the position that the reasons for rejecting information deemed unsatisfactory should be provided to the supplying party with an opportunity to provide further explanation. As indicated in our submission to the Commission last spring, since Sec. 207.8 of the Commission's interim amendment to its rules does not draw a distinction between information suppliers who are simply unable to (as opposed to refuse to) provide the requested information, a further clarification seems appropriate. We believe that the Commission should draw this distinction and limit the punitive use of "facts otherwise available" to persons who refuse to cooperate.

Investigative Activity Between Preliminary and Final Investigations

With respect to the Commission's proposal for continuous activity between the preliminary and final investigations, we support the Commission's proposal for formalizing the distribution of questionnaires for review and comment and to attempt to focus the investigation at an early stage. However, for a variety of reasons, we do not support the proposals for an "issues brief" and "issues conference."

Issue Preclusion

The language of the proposal regarding an issues brief is unclear as to the scope of preclusion, since the waiver wording is ambiguous as to whether it covers only identification of additional data collection issues or also arguments related to factual issues. Not only is it difficult to distinguish between the two, but the proposal appears to preclude supplemental questionnaires. In short, we are concerned that the proposed prohibition against raising data collections issues beyond the issues brief, may not permit the development of a full record under certain circumstances and, as such, represents a possibly improper shifting of the investigative burden to the parties, from the Commission.

Participation, Timing & Cost

Beyond the foregoing, we are concerned that the proposal could prejudice the participation of parties, or counsel, who did not actively participate in the preliminary phase of the investigation. Furthermore, the proposal to require an issues brief not later than 28 days before the scheduled issuance of the preliminary determination could create unrealistical deadlines in countervailing duty cases. Also, it fails to account for circumstances in which the Commerce Department postpones its preliminary determination less than 28 days before the scheduled date. Finally, the addition of a complex and necessarily prospective brief and conference would increase costs and could prejudice smaller respondents.

Preliminary Briefs

We support the Commission's effort to encourage parties to present arguments clearly in prehearing briefs, including a required table of contents, and recommend requirements for an Executive Summary and Table of Exhibits. However, we are concerned about the proposal, in Sec. 207.23 of the proposed regulations, for a 50-page limit on prehearing briefs, including textual exhibits. Not only could the proposal prejudice a party's ability to fully present its arguments, but it also appears to be conceptually flawed. Limits on this brief are unlikely to reduce the scope and/or number of arguments presented to the Commission, since a prehearing brief necessarily cannot address the full factual record, which is not yet developed.

Institution of Final Investigations

Since "like product" information often is raised initially in prehearing briefs, the Commission's Questionnaires may not adequately produce a factual record relevant to all like product issues. Accordingly, we believe that the Commission should, at the outset of the final injury investigation, establish a period for parties to identify like products they intend to raise in the investigation.

Final Comment Procedures

Since statutory limitations on submitting new information may present significant difficulties for parties, we believe that the Commission, among a series of procedural steps discussed in our April, 1995 submission, should seek to reduce the presentation of unexpected information but tighten the procedures for acquiring information in order to issue parties adequate and timely access to this information. Also, the Commission should establish the latest possible deadline for accepting information from Commerce concerning its dumping and subsidy margin findings.

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Short Supply Conditions and Sunset Provisions

In communicating our views to the Administration and the Congress last year regarding the implementing legislation, we took the position that products not available domestically should be eligible for exclusion from the scope of a dumping order, in the context of either a scope determination or a changed circumstances review. As to the Commission, we believe its regulation should clarify its authority to revoke an order in part due to changed circumstances in instances of short supply. Similarly, we feel that the regulations should specify that the lack of domestic supply of a product subject to a dumping or subsidy order should permit "sunset" revocation of that order under certain circumstances, as discussed more fully in our submission to the Commission earlier this year.

TEXT OF 9/9/94 LETTER TO USTR KANTOR
(Attachment to 12/21/95 USITC Submission)

September 9, 1994

The Honorable Michael Kantor
United States Trade Representative
Washington, D.C.

Dear Ambassador Kantor:

The undersigned wish to convey our views on a few critical matters related to the legislation implementing the Uruguay Round (UR) trade agreement. At the outset, we wish to reiterate our congratulations to you and the President for the successful conclusion of the Uruguay Round, and to offer our support to your efforts to seek a fair, faithful and prompt implementation of that Agreement.

While this letter primarily focuses on our concerns regarding antidumping provisions, we want to strongly indicate our support for the Administration's successfully achieving the overwhelming number of trade objectives desired by American business and laid out by Congress, including the strengthening of the GATT by the creation of the World Trade Organization.

We are concerned, however, that proper implementation may not be forthcoming for three reasons: the proposals of narrow special interests that would transform the antidumping and countervailing duty laws into punitive, trade restricting barriers; opposition to the UR purportedly based on the need to abide by the budget rules requiring offsetting revenues or spending reductions in order to pay for the loss of identifiable tariff revenues; and the misplaced concern that adoption of these agreements might undermine our sovereignty.

The Pro Trade Group is a broad coalition of U.S. companies and organizations that represent U.S. exporters, importers and consumers, including manufacturing, agricultural, wholesaling, retailing, service and civic interests, which actively seek to develop competitive markets and promote trade. It was founded in 1987 and is committed to expanding, not restricting, trade and promoting policies which achieve that goal and the resultant economic prosperity. We were actively involved in the development and passage of the Omnibus Trade and Competitiveness Act of 1988, which resulted in sweeping amendments to U.S. trade laws. The Pro Trade Group has continued to provide information, briefings, and position papers for members of Congress and Administration officials over the past six years in an effort to help develop and implement constructive trade expanding laws and policies. The positions of the PTG represent a consensus view although individual PTG participants may have varying views on particular issues. The following describes our positions and concerns in detail.

THE AGREEMENT MUST BE FAITHFULLY IMPLEMENTED

In most UR areas the United States was a big winner, and in various other trade agreements now being, or to be negotiated, the U.S. is likely to negotiate good agreements on paper. The United States needs to set an example that even where our negotiating goals are not fully realized, we stand by our agreements. Indeed, whether the benefits of our agreements actually accrue to us depends on others living up to their obligations, and we must preserve our credibility.

However, many of the dumping-related proposals apparently under consideration by the Administration and Congress for inclusion in implementing legislation will be perceived, and in most cases correctly, as violating the letter–and definitely the spirit–of the UR.

The United States should not violate the new agreement by adopting legislative provisions that are inconsistent with the agreement and which would subject us to valid complaints under the new dispute resolution mechanisms of the WTO.

The overall goal for the UR was to open and expand markets. The UR dumping agreement was explicitly a balance between legitimate, competing interests and it includes solid, balanced protections for U.S. businesses harmed by truly unfair competition, or we wouldn't have signed it.

Implementing legislation which makes the law and its effects punitive does not reflect the balance that was struck in Geneva. At the very least, the full effect of the proposed changes should be understood before they are seriously considered, and the fast-track process for implementing this agreement is not the place for such consideration.

PROTECTIONIST DUMPING PROPOSALS WOULD DISTORT AND RESTRICT TRADE

The underlying conceptual purpose of U.S. dumping laws is to prevent, unreasonable, improper pricing policies by companies exporting into other nations markets, especially pricing policies which are designed to be predatory or unfair.

In practice, we know that among those special interests most aggressively seeking to tilt the dumping laws in favor of those alleging dumping are those who may not be truly internationally competitive, and/or who seek an insulated domestic market.

These particular proposals are highly technical and are only beginning to be fully understood; but our initial assessment is that just a few of the proposed changes would have the severe effect of multiplying current dumping margins five or even tenfold. Those seeking protection for themselves should do so openly, not distorting an important trade law under the fast-track process.

RESTRICTIVE TRADE LAW REVISION WOULD HARM EXPORTS AND JOBS

Our concerns regarding restrictive trade law revision stem from certain broad principles. First, a growing number of other countries have adopted and are utilizing similar antidumping and subsidy laws. Even now, in the past three years, more American products have been the subject of antidumping actions around the world than those of any other country. Indeed, U.S. exporters will almost certainly have to face foreign laws that follow whatever the United States does in implementing these agreements.

If U.S. dumping law is allowed to become overly tilted in favor of those who wish to make it more difficult for reasonable exporters to conduct business internationally, there is little doubt that a significant number of other nations will follow the U.S. lead and use the U.S. laws and practices as a model, and the world's largest exporter will be the loser. Especially in countries with less commitment to an impartial and reliable judicial system, we risk inviting the creation of dumping-based non tariff barriers. Once established, they are likely to discourage U.S. exporters and harm export employment.

RESTRICTIVE TRADE LAW REVISION WOULD HARM PRODUCERS, CONSUMERS AND THE ECONOMY

In addition, restrictive dumping law provisions would have a damaging effect on the national economy as they would negatively affect the economic welfare of U.S. consumers -- industrial consumers as well as purchasers of retail goods -- who have a lot to gain from the trade expansion and liberalization negotiated in the UR.

In the context of today's multinational business world, imported parts and components are often critical to the competitiveness of American manufacturers. Increasing the supply risks and uncertainties for domestic producers undermines their competitiveness in domestic and foreign markets.

Consumers of retail products would be faced with inflated prices and with less availability of affordably-priced goods in the market place. Lower-income consumers would bear the highest economic burden.

Therefore, we urge the Administration and the Congress to join together in fashioning a fair and consistent implementing bill and to reject the restrictions proposed by the special interests in the name of "tough" laws. If those proposals move forward, the benefits to the American economy of the new agreement will be quickly overwhelmed by the damage caused by these new barriers to fair trade.

BUDGET CONCERNS MUST BE PLACED IN THEIR PROPER CONTEXT

We also are concerned that the benefits of the agreement could be lost due to the proverbial "bean counting" related to the budget agreement requirements. Any theoretic loss from the UR, of course, will be more than offset by the increase in economic activity in the United States and the corresponding increase in tax revenues of other types. We believe that the immediate concern about budgetary effects should be resolved as swiftly as possible to allow the benefits of the agreement to be realized now. Since the enormous UR benefits for the U.S. economy, and for the U.S. Treasury, will only be realized after implementation, we urge you to explore a Congressional waiver of the budget rules related to UR implementation. We offer our help in that regard.

DISPUTE SETTLEMENT SHOULD NOT RAISE SOVEREIGNTY CONCERNS

Finally, the international dispute resolution mechanisms were negotiated at the behest of the United States in order to provide more certain means of resolving disputes of concern to American interests and should be supported as such. We believe American businesses gains from these provisions, which do not adversely affect U.S. sovereignty. We urge those who have raised concerns about a supposed loss of sovereignty due to these mechanisms to work constructively with you and your colleagues to ensure that these mechanisms provide the tangible benefits for United States interests that were their genesis.

CONGRESSIONAL CONSIDERATION

Our members represent a large proportion of the overall economy of the United States. We support legislation which fully implements the GATT Agreement. We oppose implementing legislation which would undermine the agreement's overall benefits to the United States. Our concerns stem primarily from the apparently serious consideration being given to legislative proposals put forward by some in Congress, and by certain narrow, special interests in the private sector (including those of the so-called Committee to Support U.S. Trade Laws). We believe that clean, faithful implementing legislation can pass Congress far more easily than some are asserting. The gains in the agreement are very significant, even for most of the protectionist sectors who want, but do not need, the changes they advocate. The great risk comes from encumbering the implementing legislation with dumping and other trade law proposals that overburden this legislation, which are likely to cause delay and will seriously undermine Congressional support for future fast-track authority. We call upon you to reject these proposals and, instead, to adhere to the market-opening thrust of the overall agreement in adopting fair proposals to ensure that all U.S. interests are protected, and the agreement promptly ratified.

The undersigned companies and associations subscribe to the foregoing letter:

- A A A Spanish Translation Service
- ABS Corporation
- Agriculutural Trade Council
- A.J. Rose Manufacturing Company
- American Association of Exporters and Importers
- American Architectural Manufacturers Association
- American Association of Port Authorities
- American International Automobile Dealers Association
- American International Diversified
- Argents Air Express Ltd.
- Associated Merchandising Corporation
- America Overseas, Inc.
- American Racing Equipment Co
- Apple Computer Co
- Association of Home Appliance Manufacturers
- Association of International Automobile Manufacturers
- AST Research, Inc.
- Austin-San Antonio Corridor Council
- Beadex Manufacturing Co.
- Business Technology Association
- Chesterfield Steel Self Company
- Color Tile, Inc.
- Compaq Computer Corporation
- Computer and Communications Industry Association
- Consumer Alert
- Consumers for World Trade
- Cosmar Corporation
- Continental Bank
- Convex Computer Corporation
- Cotterell, Mitchell & Fifer, Inc.
- Craig Consumer Electronics
- Crown Iron Works Company
- Dean Witter Reynolds, Inc.
- Denar Chartering, Inc
- Diamond V. Mills
- Diagraph Corporation
- Dicker International
- Direct Marketing Association
- Dodge-Regupol, Inc.
- Ecology International Ltd. Corp.
- Elan International, Inc.
- Falcoln Products, Inc.
- Fortec, Inc.
- F.S.I.
- Gateway 2000, Inc.
- Gaymar Industries, Inc.
- Gilbert & Van Campen Executive Search International
- Harlingen Industrial Foundation, Inc.
- Hawkeye Steel Products, Inc.
- Haworth, Inc.
- Hawthorne Lift Systems, Inc
- HHS Export Trading Company
- Image Systems Technology, Inc.
- Indiana University, Dept. of Political Science
- International Electronics Mfrs. and Consumers of America, Inc.
- International Orbits, Inc.
- Inventia Global Latino Advertising
- Jetstream International
- John V. Carr Customs Brokers
- JSJ Corporation
- Kap-Pel Fabrics, Inc.
- Kingston Technology Corporation
- Lindsay Forest Products, Inc.
- Lip Orbits, Inc.
- Lockwood Greene International, Inc.
- Lynden International
- Master Chemical Corp.
- Mosler Inc.
- Millers National Federation
- Millipore Corporation
- Morrison Express
- Motorcycle Industry Council
- MTE Corporation
- MITA, Inc.
- National Association of Beverage Importers, Inc.
- National Grain Sorghum Producers
- National Grange
- Newgen Systems Corporation
- Norphland Corporation
- Northrup Grumman Corporation
- North American Export Grain Association
- Nucor Corporation
- OMNI Manufacturing Inc.
- Prassas Metal Products
- Precision Metalforming Association
- Regional Business Partnership
- Sea-Land Corporation
- Southwest Radiological Sales
- Saniseru
- Sparling Instruments Co., Inc.
- Sun Microsystems, Inc
- Transport Express
- USA-ITA
- Viking Freight
- Ventana, Inc.
- Weld Bend Company
- West Bend Company
- Western Atlas, Inc.
- Whirlpool Corporation
- Wilmarth & Associates Trade Advisory Services

TOTAL: 102

Appendix 2

ANALYSIS OF PROPOSED SAFEGUARDS CHANGES FROM H.R. 2795 IN TERMS OF WTO/GATT

The following discusses the issue of whether H.R. 2795, if enacted, would violate the World Trade Organization (WTO) Safeguards Agreement, and GATT 1994, as well as issues that could arise regarding appropriate compensation against the United States if utilized.

A. Violation of WTO Safeguards Agreement

1. The H.R. 2795, if enacted, would amend the U.S. safeguards statute by adding the following provisions:

(a) The definition of "domestic industry" would be supplemented by the following paragraph:

> ". . . in the case of one or more domestic producers who produce a like or directly competitive perishable agricultural product during a particular growing season, limit the domestic industry to those producers if the producers sell all or almost all of their production of the article in that growing season and the demand for the article is not supplied, to any substantial degree, by other domestic producers of the article who produce the article in a different growing season."

(b) The definition of "like or directly competitive product" would be supplemented with the following two paragraphs:

> "In the case of a perishable agricultural product produced by a domestic industry described in paragraph (4)(D), the term 'like or directly competitive article' means only the articles produced by the industry during the applicable growing season."
>
> "In the case of perishable agricultural product, the Commission may limit its consideration to imported articles that are entered, or withdrawn from warehouse for consumption, during the same growing season as the like or directly competitive product."

2. It appears that the legislation would violate the WTO Safeguards Agreement. The term "directly competitive," as used in the WTO agreements, is intended to be applied in situations in which products are not "like," but are substitutable. Any seasonal goods imported from any country during a specific season are "like" such goods grown in the United States during the entire year, not just during the specific season. The legislation, in effect, would allow the U.S. International Trade Commission (ITC) to limit the scope of "like" products to those that are "directly competitive" -- an interpretation which is not supportable. Under this proposal, the United States would consider any seasonal product to be "like" products only if they were also "directly competitive." However, the Safeguards Agreement states that the goods must be "like or directly competitive" -- not "like and directly competitive."

3. Article 4(1)(c) of the Safeguards Agreement states that:

> "a 'domestic industry' shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products." (Emphasis added.)

To be consistent with this provision, the legislation would require an assertion that the tomatoes grown during the winter season constitute the "total domestic production" of those products. However, sales of the same good during the other eight months of the year cannot legitimately be excluded from "total domestic production."

4. Article 4(2)(a) of the Safeguards Agreement requires the competent authorities, in investigating whether there is serious injury, to "evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of the industry." A refusal by the ITC to examine the condition of the U.S. industry other than during a specific season would seem to be inconsistent with the obligation to evaluate "all relevant factors" -- especially (i) when growers sell such goods during other times of the year, and (ii) because the growers almost certainly maintain their financial records on an annual basis.

5. Prior to the amendment, the U.S. safeguards statute defined "domestic industry" in a manner very similar to the definition in the WTO Safeguards Agreement. The ITC, in its April 1995 decision in the tomatoes safeguards proceeding, found that limiting the domestic industry to production during a particular season would be both illogical and contrary to the statute. By extension, therefore, it can be argued that the ITC's ruling supports the

position that defining a domestic industry by seasonality is contrary to the WTO Agreement.

6. The WTO Safeguards Agreement definition states:

"a 'domestic industry' shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products."

7. The U.S. definition states:

"the term 'domestic industry' means, with respect to an article, the producers as a whole of the like or directly competitive article or those producers whose collective output of the like or directly competitive article constitutes a major proportion of the total domestic production of such an article."

8. In its April 1995 decision, the ITC stated:

"Petitioners' proposed domestic industry definition leads to the arguably illogical result of two separate industries producing tomatoes with identical characteristics and uses, some produced in the *identical facilities, where the only distinction between them is that one produces products which are* 'directly competitive' with imports entering at certain times of the year."

"[O]ur industry concept under Section 201 can be distorted to reach an absurd outcome, and we must avoid industry definitions that are drawn artificially narrow simply to make relief more likely."

"The question raised is -- on the assumption that decision to enter and remain in business are based or annualized expectations, rather than expectations for part of the year -- does the analysis of an industry during a 4 month period represent a valid assessment of the health of the industry?"

"Another similar question raised is whether the statute contemplates that petitioners may, through the mechanism of a narrowly tailored scope of investigation such as the one in the instant investigation, define the domestic industry in such a manner that the Commission only examines a narrow window (the time the industry competes with imports) in determining injury. A related issue is that, through a narrowly tailored scope, petitioners in subsequent cases could potentially define certain months which would show an increase in imports (while full-year statistics would not), as required for an affirmative determination under section 202."

The comments should could be considered in an analysis of the requirements of the WTO agreement. The approach reflected in the U.S. amendment, if carried to its logical conclusion, would allow an argument that the WTO agreement allows a domestic industry to be defined by a season even shorter than the four months contemplated in the tomatoes situation, and that this may be done for goods that are not perishable. For example, a petitioner might attempt to argue that it was entitled to relief because it was harmed by imports during the one-month Christmas shopping season. Put another way, the U.S. amendment significantly undermines the requirement that imports have caused, or are threatening to cause, serious injury. Furthermore, if the U.S. approach to defining "domestic industry" is deemed acceptable under the Safeguards Agreement, it could also be justified under the Antidumping and Subsidies Agreement for use in antidumping and countervailing duty proceedings.

B. <u>GATT Inconsistency (Articles II and XI)</u>

1. If the proposed amendment actually resulted in a safeguards action against perishable produce under these circumstances, the United States would be in violation of GATT Article II (if the safeguards action were an increase in U.S. duties beyond the current MFN level) or Article XI (if the action were a quantitative restriction), because the action would not have been authorized by GATT Article XIX.

C. <u>Compensation Issues</u>

1. If the United States were to impose higher duties or a quantitative restriction under the safeguards statute, it likely would be required to provide compensation to the affected country. In theory, such country should be entitled to double compensation -- once for the effects of the withdrawal of a concession, and again for the fact that the United States was not entitled to take the action at all.

2. A possible approach to this issue would be to seek compensation in a WTO dispute settlement proceeding for the violation of the WTO Safeguards Agreement represented by the amendment to the statute, while separately claiming compensation for the safeguards action itself under NAFTA Article 802(6). The fact that a dispute is pending under the WTO regarding the U.S. safeguards statute should not prevent the affected country from claiming compensation under Article 802(6) in cases the affected country is party to this agreement.

COMMENTS OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION ON MISCELLANEOUS TRADE PROPOSALS

SUBMITTED TO THE SUBCOMMITTEE ON TRADE COMMITTEE ON WAYS AND MEANS

MARCH 1, 1996

The Semiconductor Industry Association ("SIA") appreciates this opportunity to comment on two bills currently pending before the Subcommittee on Trade: The Temporary Duty Suspension Act (H.R. 2822) and the Semiconductor No Marking Legislation (H.R. 947).

1. Temporary Duty Suspension Act (H.R. 2822)

SIA strongly opposes H.R. 2822, the Temporary Duty Suspension Act, and urges the Subcommittee on Trade to reject it. This bill, proffered to permit the temporary suspension of antidumping and countervailing duty remedies, will eviscerate existing antidumping safeguards for domestic industries, especially those which are subject, like the semiconductor industry, to short product life-cycles and rapid boom/bust periods. A brief description of the U.S. semiconductor industry and its experience with Japanese dumping and subsequent recovery during the mid to late 1980s demonstrates why this is so.

The U.S. Semiconductor Industry

The U.S. semiconductor industry is a highly competitive, dynamic industry which provides 240,000 U.S. jobs. In 1995, world sales reached $59 billion, representing 40 percent of the $144 billion world market. The world semiconductor market is expected to double by the year 2000, with projected sales of over $300 billion. The domestic industry is poised to compete in this rapidly growing market, having spent approximately $16 billion on research and development and on capital investment in 1994 alone. The industry's future growth and competitive position, however, depends on its continued ability to compete with fairly traded imports. H.R. 2822 threatens that ability.

History of Japanese Dumping of Semiconductors

U.S.-Japan economic competition in the electronics industry has been characterized by Japanese protection of its home market and Japanese Government toleration of anti-competitive practices. These market distortions have permitted Japanese firms to dump excess semiconductor production in world markets during periods of market downturns.

Dumping is also encouraged by the nature of the semiconductor business cycle, which encourages massive capital spending during periods of growing demand, which quickly can result in the creation of overcapacity during cyclical downturns, leading in turn to dumping of excess production. Because it takes on average 18 months to build a new fabrication plant, industry capacity is often far below demand during the early phase of boom periods. Moreover, since the end of any period of high demand cannot be predicted, capital spending plans may well outlive the boom period, as happened in the mid-1980s. Thus, high levels of production may continue during periods of slumping demand, due in part to high fixed production costs and the need to continue plant operations to realize amortization benefits. This cyclical problem of building up capacity in booms, and dumping during busts, came to a head in the early to mid 1980s.[1/]

In the 1980s, U.S. producers of commodity memory semiconductors (DRAMs) were nearly completely displaced as the result of Japanese dumping, first in 1981-82, and again in 1984-85. The first period (1981-82) culminated in Japanese domination of the 64K DRAM and leadership in the race to commercialize the 256K DRAM.

1/ This cycle is discussed in the International Trade Commission's recent report on U.S. antidumping laws. See *The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements*, Inv. No. 332-344, Pub. No. 2900 (June 1995).

In 1983-84, world demand for semiconductors (including EPROM and DRAM memory devices) soared, encouraging dramatic investment in production facilities in Europe, Japan and the United States. Capital spending led to significant overcapacity in 1984-85, just as demand began to slump. Despite falling computer shipments, chip makers maintained production at full capacity. In Japan, a protected home market enabled chip manufacturers to maintain domestic prices; excess production was dumped on world markets at heavily discounted prices, often well below the cost of production. Huge losses were experienced by both the Japanese and U.S. industries, with estimated Japanese losses as high as $4 billion in 1984-85 alone. Meanwhile, nine of eleven U.S. chip producers were driven out of the DRAM business. One U.S. producer, Mostek, was driven out of business altogether.

At the semiconductor industry's request, the U.S. Department of Commerce initiated antidumping investigations into 64K DRAMs and EPROMs. Later that year, the U.S. Government self-initiated an investigation into 256K and future generation DRAMs. The 64K DRAM case resulted in antidumping duties of up to 35 percent. While the 64K EPROM and 256K DRAM cases were settled by suspension agreements which included provisions to prevent Japanese dumping in both the U.S. and third country markets, the Department of Commerce issued determinations in these cases finding dumping margins as high as 188 percent (in the case of EPROMs). These suspension agreements were incorporated by reference in the 1986 U.S.-Japan Semiconductor Agreement.

The 1986 Semiconductor Agreement consisted of three main provisions: (1) improved access to the Japanese market for foreign-produced semiconductors (2) the prevention of dumping in the United States; and (3) the prevention of dumping in third country markets. In addition, separate suspension agreements were signed for DRAMs and EPROMs. Unlike past U.S.-Japan agreements, the Agreement and the related suspension agreements did not impose quantitative restraints on imports of Japanese semiconductors, nor did it impose a price floor on imported chips. Rather, its objective was to induce Japanese producers to sell at prices which were cost-based, where the lowest prices would be offered by the firm with the lowest costs. The Agreement also established a monitoring system to provide early warning of renewed dumping. In 1987, in response to continued Japanese dumping in third countries and a lack of progress on market access in Japan, President Reagan imposed sanctions on certain Japanese products.

In the aftermath of the abrupt market exit of most non-Japanese producers of DRAMs, a shortage of DRAMs materialized for several years as Japanese producers, with control of 90 percent of world DRAM production, began jointly regulating their output in order to raise prices. Following assurances from the Government of Japan that no quantitative or other restrictions existed on the production, supply, or shipment of semiconductors, and evidence of an end to Japanese third country dumping, the United States suspended the third country dumping sanctions.

Once Japanese dumping was halted, the U.S. industry began the road to recovery. U.S. producers were able to reestablish significant DRAM production and save tens of thousands of domestic jobs. As non-Japanese production rebounded, the supply and demand relationship stabilized, permitting a return to full competition in the DRAM industry. Similarly, in the case of EPROMs, once Japanese dumping was halted, the U.S. industry was able to rebound. Substantial world market share was regained with the advent of FLASH EPROM chips, a technological development made possible only because U.S. producers were provided relief from the injury caused by unfairly traded imports.

If the relief provided for under the U.S. antidumping law had been suspended -- even temporarily -- during the mid to late 1980s, U.S. DRAM production would never have recovered, Japanese producers would still be able to manipulate the price and availability of DRAMs, and U.S. producers would not have developed new products such as FLASH EPROMS. This would have damaged not just the U.S. semiconductor industry, but U.S. industrial users of semiconductors as well.

The Temporary Duty Suspension Act

H.R. 2822 would permit the Department of Commerce to temporarily suspend antidumping or countervailing duties for up to one year (with additional extensions available) if the Department of Commerce finds that "prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." This finding is left entirely to the Department's discretion, with no statutorily defined factors for the Department to consider in its deliberations. While the bill does provide for an "opportunity to comment," no other due process procedures are provided. Moreover, the bill does not provide for judicial review of any suspension decision.

It should be noted that the Congress has previously considered and rejected a similar "short supply" provision. During the drafting of the Uruguay Round Agreements Act, both the House Committee on Ways and Means and the Senate Finance Committee rejected "short supply" amendments. The Temporary Duty Suspension Act would provide even greater authority to the Department of Commerce to suspend antidumping duties than would the proposals rejected by Congress in 1994. The Administration continues to oppose any such measure, as it did while the Uruguay Round implementing legislation was considered.

Reasons to Reject the Temporary Duty Suspension Act

There has not been dumping by Japanese semiconductor producers since the mid-1980s, due in part to a once again burgeoning demand. If, however, a recession were to hit, or demand were to fall, dumping could again recur, and antidumping proceedings may again be the only way to save the domestic industry.[2/] Permitting the Department of Commerce to suspend those duties, even temporarily, would only reward those who dumped while waiting for market conditions to improve, and compound the harm already done to the domestic industry. As explained below, the proposed suspension provision is not superior to existing mechanisms used to limit or amend the scope of duty orders. Moreover, the proposed bill would undermine the remedial purpose of the law.

Temporary duty suspension would reward dumpers who have driven domestic producers from the market: As explained above, suspension of antidumping duties can indeed reward dumpers, particularly those who have succeeded in driving U.S. producers out of a particular market segment. Duty suspension may also prevent domestic industries from ever being able to produce the product which is alleged to be in short supply, by denying those industries the relief needed to invest in new plant and equipment in order to continue to compete. As the semiconductor industry's experience with FLASH chips demonstrate, relief from unfairly traded imports may be necessary for nascent domestic industries to grow or for new products to be developed. While proponents of the legislation argue that a temporary suspension would end as soon as domestic production begins, the very suspension could in fact prevent domestic production from ever developing.

Existing mechanisms are adequate: Contrary to some assertions, mechanisms already exist under which the Department of Commerce can, and does, consider requests to adjust existing antidumping and countervailing duty orders based on allegations that a particular product is not available domestically. For example, the Department of Commerce recently approved a changed circumstances request based on the fact that petitioners had no interest in producing the product at issue.[3/]

2/ It should be noted that some recent market entrants -- including Korea and Taiwan -- have launched massive capital investment programs in semiconductor manufacturing facilities.

3/ *See Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 Fed. Reg. 7471, 7472 (Dep't Comm. 1996) (Final Notice and Partial Revocation of Antidumping Duty Order).

There are several such mechanisms currently available. First, the Department of Commerce can adjust the scope of an order during the course of an investigation; this often occurs when a previously-defined like product is not produced in the United States. Second, an existing order can be adjusted during a scope determination. Third, an interested party may petition for review of an order based on changed circumstances. Fourth, the International Trade Commission can exclude "niche" products as part of its injury determination. Notably, and unlike the proposed bill, which would rely solely on the Department of Commerce's discretion, these procedures provide standards by which the decisions of the Department of Commerce or the International Trade Commission may be judged.

The bill would politicize the operation of U.S. trade laws: Under U.S. trade laws, antidumping and countervailing duties are imposed on unfairly traded imports in an amount equal to the level ("margin") of dumping or subsidy determined to exist by the Department of Commerce after a lengthy and thorough investigation, as well as a determination of material injury by the International Trade Commission. This system is designed to ensure that the trade laws act only as a remedy to offset the precise amount of unfair advantage provided to the unfairly traded imports. The discretion provided to the Department of Commerce and the International Trade Commission in making these determinations has been carefully circumscribed by the Congress over time to ensure that these determinations are made on the basis of the facts presented, consistent with the detailed statutory standards established by the Congress, rather than on political pressures. Both U.S. petitioning industries and foreign respondents also have extensive rights to appeal these determinations for review by a specialized federal court, the Court of International Trade.

H.R. 2822 would fundamentally alter the trade laws by granting broad discretion to the Department of Commerce regarding when antidumping and countervailing duties would be applied. The legislation establishes no standard regarding when prevailing market conditions make imposition of antidumping or countervailing duties inappropriate. At best, this makes the Department of Commerce the sole judge as to when market conditions justify providing relief to a particular industry, with no system of checks and balances for ensuring that decisions are not made for purely political purposes. The Department of Commerce has opposed such a grant of discretion for this very reason.

Providing the Department of Commerce with discretionary authority to suspend duties interferes with the proper role of the International Trade Commission: Every antidumping or countervailing duty order is preceded by a determination by the International Trade Commission that unfairly traded imports are causing injury to the petitioning industry. In order to find injury, the Commission must first determine that subject imports compete with the domestic like product; where imports and domestic products do not compete, no injury is found. By permitting the Department of Commerce to suspend duties, the bill in effect permits the Department to overrule the Commission.

The bill's suspension mechanism would be subject to abuse: The suspension mechanism provides a readily available loophole for purchasers of unfairly traded imports which are actually substitutable for domestic products. Under the bill, all such a purchaser would have to do is narrowly tailor its specifications so as to exclude all products -- even those which are ostensibly fungible -- but the unfairly traded import.

The bill is inconsistent with the purpose of the unfair trade laws: The purpose of the unfair trade laws is not to exclude imports. Rather, trade remedies are meant to curb unfair practices; the countervailing duty law, for example, is meant to discourage foreign government subsidization. Similarly, and as reflected in the semiconductor industry experience, antidumping laws provide a remedy to unfair pricing which often results from closed home markets or private anticompetitive practices. Granting even temporary exemptions for unfairly traded products undermines those goals.

It is of no comfort to suggest that the provision would only apply when no domestic producer would immediately benefit from the imposition of duties. As the semiconductor

industry's experience has repeatedly demonstrated, the domestic industry always benefits from relief against unfair trade practices and would be subject to potentially devastating injury if these unfair trade practices were not remedied. Accordingly, the proposed short supply provision should be rejected.

2. Semiconductor No Marking Legislation (H.R. 947)

SIA strongly supports H.R. 947 and urges the Subcommittee on Trade to include this bill in any trade legislation to be considered by the Ways & Means Committee. H.R. 947 is a deficit-neutral bill that provides an important exemption from the U.S. requirement to mark semiconductors and their containers with country of origin as currently required by section 304 of the Tariff Act of 1930.

A key objective of the bill is to eliminate problems related to conflicting origin determinations among the principal semiconductor consuming countries: the United States, EU member nations, and Japan. There are two methods for determining the origin of semiconductors. The United States determines the origin of semiconductors based on where the silicon chip is packaged (assembly) in plastic or ceramic, while the European Union and Japan focus on where the semiconductor wafer fabrication (diffusion) takes place. Thus, if a device is marked according to U.S. requirements, it may be mismarked when it is shipped to an EU country or Japan. Since the European Union and Japan do not require marking of semiconductors, but prohibit false marking, the obvious solution to this problem is to eliminate the U.S. marking requirement.

H.R. 947 also eliminates the cost and overall operational burden of marking semiconductors with the country of origin. Indeed, there is a near unanimous view in the semiconductor industry that country of origin marking requirements offer little benefit, at great cost, to the international trade of semiconductors.

The marking law that this bill seeks to amend is designed to enable purchasers of products to make an informed buying decision based on the country of origin. Purchases of semiconductors overwhelmingly consist of original equipment manufacturers who generally are aware of where the product is made through the qualification process.

SIA recommends that the bill's current effective date of January 1, 1996 be changed to January 1, 1998. This change is necessary to insure an orderly transition to a system where marking is no longer required.

SIA understands that there is some opposition to H.R. 947 from semiconductor purchasers who use the existing marking for the purpose of declaring the origin of semiconductors that are exported to third countries. This is an unintended use of the U.S. marking. As explained, different countries have different ways of determining origin of semiconductors. As a result, the marking required by the United States can give no assurance that the products are marked in a way that meets third-country origin standards. The most that the marking statute can seek to accomplish is that products entering the United States are marked in accordance with U.S. law. Therefore, any opposition to the elimination of semiconductor marking is misplaced if that opposition is based on the perceived need to use the existing marking to certify the origin of individual devices in other countries.

In sum, passage of H.R. 947 will provide both short-term and long-term benefits on a deficit-neutral basis. SIA therefore urges you to pursue the incorporation of this bill in any trade legislation to be considered this year.

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

Comments Of The Southern Tier Cement Committee
In Opposition To H.R. 2822

March 1, 1996

These comments are filed on behalf of the Southern Tier Cement Committee, a coalition of 25 U.S. cement producers. The Committee represents 65 percent of U.S. production capacity and 75 percent of capacity located in the southern tier states extending from California to Florida. A list of the members of the Southern Tier Cement Committee, together with the locations of their headquarters offices and their 71 production plants, is attached to these comments.

Summary

The Southern Tier Cement Committee strongly opposes H.R. 2822, the "Temporary Duty Suspension Act." This proposed amendment to the antidumping and countervailing duty laws would grant the U.S. Department of Commerce ("Commerce") exceptionally broad authority and discretion, apparently without judicial review, to suspend remedial duties on a product covered by an antidumping or countervailing duty order whenever Commerce "determines that prevailing market conditions related to the availability of the product in the United States make imposition of such duties inappropriate." H.R. 2822 provides an unnecessary solution to a problem (short supply caused by antidumping and countervailing duty remedies) that does not exist, is inconsistent with the purpose of the antidumping and countervailing duty laws, and would have extremely harmful consequences for U.S. industries, U.S. workers, and the overall U.S. economy. The Southern Tier Cement Committee strongly opposes this proposal, which threatens to eviscerate the antidumping relief that the industry achieved at great expense against unfairly priced imports from Mexico, Japan, and Venezuela.

If approved, H.R. 2822 would fundamentally weaken U.S. remedies against unfairly priced imports. The U.S. antidumping and countervailing duty laws have been a fundamental part of U.S. trade policy for many decades. Under these laws, remedial duties are imposed on imports that, after a thorough investigation, are determined by Commerce to be unfairly traded and by the U.S. International Trade Commission ("ITC") to be injuring a domestic industry. The amount of the duties is established at the level necessary to offset the amount of dumping (the "dumping margin") or the subsidy determined by Commerce. Investigations are conducted under standards and procedural safeguards established by Congress to protect the interests of all parties, and agency determinations are subject to review by the U.S. Court of International Trade or by NAFTA binational panels in the case of investigations involving Canadian or Mexican products. By removing the price-distorting effects of the foreign unfair practice, the imposition of these duties permits prices to be set by the normal market forces of supply and demand and allows domestic producers and importers to compete on an even basis.

As demonstrated by the experience of the U.S. cement industry, which is discussed below, the antidumping and countervailing duty laws are essential to

preserving U.S. manufacturing industries and jobs. Without the remedies against unfair import pricing provided by these laws, a number of vital U.S. industries, including the cement industry, would have no remedy against unfair and predatory import pricing.

"Short Supplies" Are The Predicates For Investment And Job Creation

Because cement production is capital intensive, a high utilization of plant capacity is required to cover fixed costs. Plant capacity utilization is cyclical, following the cyclical demand for cement that is dictated by the construction cycle. When plant capacity becomes fully utilized during the expansion phase of the construction cycle, fixed costs per ton of production decrease and cement prices tend to increase. The profits resulting from lower costs and higher prices during the expansion phase of the construction cycle provide cement producers the investment incentive to modernize aging capacity and to build new capacity. Normal "shortages" during the short-lived expansion phase of the cycle are a necessary predicate for capital investment and job creation.

The Favorable Impact Of Antidumping Relief For The Cement Industry

The antidumping orders on imports of gray portland cement and clinker from Mexico and Japan and the suspension agreement on imports of gray portland cement and clinker from Venezuela demonstrate the economic rationale of the U.S. antidumping law. During the 1983-1989 expansion of construction activity in the United States, dumped cement imports flooded the market and suppressed prices. Average import prices for cement declined from $45.13 per ton in 1981 to $34.42 per ton in 1989, a 24 percent decline. This rapid decline in import prices drove down the U.S. price for cement. In addition, the unfair pricing allowed imports to rapidly gain market share. Imports' share of the U.S. market increased from 4.6 percent in 1982 to 19.7 percent in 1987.

The sharp increase in unfairly priced imports in the 1980s removed U.S. producers' normal investment incentives and led to a net disinvestment in cement assets during a period of sharply increasing demand. Domestic production capacity declined 10 percent between 1980 and 1990, even though demand for cement increased 40 percent. In addition, the ITC found that employment in the industry declined 19 percent between 1986 and 1989. Because no "shortages" resulted from increasing demand, there was no increase in prices to signal the need for investment in additional capacity. Meanwhile, foreign producers in Mexico, Japan, and Venezuela maximized their returns by exporting their excess capacity at dumped prices.

During 1990-1991, the U.S. cement industry obtained favorable rulings from Commerce and the ITC that dumped cement imports were materially injuring and threatening additional material injury to U.S. cement producers. The dumping margins averaged in excess of 50 percent. As a result of those rulings, cement imports have substantially decreased.

With the rebound in construction activity in 1994 and 1995, U.S. capacity utilization predictably increased, reflecting the expansion phase of the

cycle. The tighter supplies of cement and resulting market price signals during this peak in the cycle led to new capital investment and job creation in the industry. As shown in the second attachment to these comments, there are numerous projects underway to build new capacity, expand existing capacity, or upgrade existing facilities. These projects include a new greenfield plant in Florida, the replacement of aging plants in Washington and Missouri, and major plant expansion projects across the country. Left alone, the free market--absent unfairly priced imports--has resulted in additional cement capacity to support future construction activity.

Congress Recently Rejected A Short Supply Amendment

Although dressed in new raiment, H.R. 2822 is an old idea. It is the latest version of a "short supply" amendment designed to remove antidumping and countervailing duty remedies during periods of short supply of a product subject to such remedies. This idea has previously been soundly rejected by U.S. policy makers. During the Uruguay Round negotiations, the Republic of Korea, with support from other nations that benefit from unfairly traded exports, proposed a short supply exception to antidumping remedies. This proposal was rejected by negotiators from the United States and other countries. As a result, a short supply provision is not contemplated or required by the GATT 1994 or by the Antidumping and Subsidies Agreements.

The antidumping and countervailing duty laws were extensively amended in 1994 to implement the requirements of the Uruguay Round Agreements. A short supply exception was proposed during consideration of the Uruguay Round Agreements Act. Despite intensive lobbying for this amendment by interests that benefit from unfairly low-priced imports, the amendment was defeated in the House Ways and Means Committee by a margin of 23 to 15 and in the Senate Finance Committee by a margin of 13 to 7.

At the very least, it is simply premature for Congress to be considering new legislation to amend the antidumping and countervailing duty laws. The Uruguay Round Agreements Act made numerous complex revisions to these laws that only went into effect at the beginning of 1995. The administering agencies are still working out the interaction of all these changes and how they affect individual cases. Commerce, for example, has only recently published its proposed regulations to conform to the 1994 amendments. It will clearly be several years before the effects of the new amendments will be well understood and the need for further amendments, if any, will be established.

Until that time, the Congressional desire for a "cease fire" on new antidumping and countervailing duty proposals appears strong. In particular, this is not a good time for once again seeking enactment of a highly controversial short supply provision. Many interests were disappointed in 1994 that their favorite proposals for amending the antidumping and countervailing duty laws failed to win Congressional approval. If there is an effort to pass H.R. 2822, supporters of other amendments will renew their efforts as well.

H.R. 2822 Is Much Broader Than Earlier Short Supply Proposals And Will Politicize The Administrative Process

Previous short supply amendments proposed only to limit antidumping and countervailing duty remedies during periods in which a product subject to such remedies is in short supply. H.R. 2822 is in fact far broader, because the situations in which duties can be suspended are no longer limited to periods of short supply, but include any period in which "prevailing market conditions," in the view of the Administration then in control of Commerce, make the imposition of duties "inappropriate." The breadth and vagueness of this standard would allow each new Administration to interpret this provision as it sees fit, so that an Administration that is adverse to the Congressional policies favoring antidumping and countervailing duty remedies could use it to destroy the effectiveness of existing orders and to discourage domestic petitioners from filing new cases.

Besides the breadth of its potential application, H.R. 2822 is more detrimental to the effectiveness of the antidumping and countervailing duty laws than its predecessor "short supply" proposals because it would inevitably politicize Commerce's decision making process. As proposed in 1994, the short supply amendment included a number of factors that Commerce was required to consider prior to deciding whether to suspend an antidumping or countervailing duty order. H.R. 2822, however, provides Commerce exceptionally broad discretion to suspend antidumping duties without any Congressional guidance.

Congress has labored over the years to ensure that agency decisions in antidumping and countervailing duty cases are based on the facts presented and the application of detailed statutory standards, not on political considerations. H.R. 2822 is contrary to this longstanding policy. Given the breadth of the discretion given Commerce to determine when prevailing market conditions make imposition of antidumping or countervailing duty remedies inappropriate, and the lack of Congressionally enacted safeguards or guidelines, this provision will necessarily politicize the administrative process. Notably, the legislation also contains no provision for judicial review of Commerce's decisions. Without the normal checks and balances provided by statutory guidelines for decision and a right of judicial review, there will be no way to ensure that agency decisions are not made for purely political reasons. Predictably, if H.R. 2822 is enacted, there will be a surge of lobbying of members of Congress and the Administration by respondents, petitioners, and foreign governments seeking to influence Commerce's decisions on whether to suspend duties.

A Short Supply Exception Is Unnecessary Because Antidumping Relief Does Not Restrict Import Volumes

The seemingly attractive premise of a short supply exception--that an antidumping order on unfairly priced imports precludes or restricts the importation of the product involved--is false. Under an antidumping or countervailing duty order, importers of the affected products must pay duties to offset the dumping or subsidization, but they may continue to purchase the products from the same foreign supplier or from any other foreign supplier, in addition to domestic sources. Antidumping and countervailing duty remedies deter sales of foreign goods in the

United States at an unfair price, but, unlike a quota, do not bar imports or restrict the quantities involved. No duties are levied on imports sold at fair value. In addition, an antidumping order already adjusts the dumping margin in response to "prevailing market conditions" in the United States. In periods of "short supply," U.S. prices increase in response to increasing demand, increasing capacity utilization, and higher marginal costs of production. The higher U.S. prices attract additional imports. Moreover, the higher import prices necessarily reduce the margin of dumping and the resulting duties. If a true shortage ever existed, prices would simply increase to the level needed to attract imports at prices that are not dumped.

This is demonstrated by the experience of the cement industry. During the recent peak in the construction cycle, as U.S. demand significantly increased, there was also a large increase in cement imports. These imports, which were sourced from many countries, prevented any possibility that limitations on domestic producers' production capacity would lead to a shortfall in the supply of cement in the market.

Proponents of a short supply amendment cite the experience under the voluntary restraint agreements ("VRAs") for steel imports administered by Commerce. There is no similarity between that program, however, and the antidumping and countervailing duty laws. The steel VRAs were designed to temporarily restrict imports to give the domestic industry a "breathing space" to modernize and adjust to changes in conditions of competition. Thus, it was considered appropriate to provide an administrative mechanism for relief from the VRAs for consuming industries that could not obtain needed supplies of particular steel products. Because antidumping duties and countervailing duties only correct the pricing of imports, such a mechanism in the antidumping and countervailing duty laws is simply unnecessary.

If antidumping and countervailing duty remedies do not restrict imports, the question necessarily arises why there has been such intense lobbying to pass a short supply amendment. Plainly, the motivation of the supporters of such legislation can only be to obtain supplies at an unfair price. This desire is simply contrary to the purposes of the antidumping and countervailing duty laws.

Effective Mechanisms Already Exist For Excluding A Product From An Antidumping Or Countervailing Duty Order Where Remedies Against Unfair Pricing Are Unnecessary

The current antidumping and countervailing duty laws already provide several mechanisms for ensuring that duties are imposed only on those products necessary to prevent injurious unfair pricing, without diluting the effectiveness of antidumping and countervailing duty remedies.

First, during the initial investigation of an antidumping or countervailing duty petition, Commerce is required to define the scope of the investigation and can ensure that the coverage of an antidumping order is not so broad as to encompass products that the domestic industry does not produce and has no interest in producing. Petitioners normally assist Commerce in this determination in order to craft remedies that are tailored specifically to the unfairly traded imports

that are causing the injury. In addition, importers and industrial consumers should bring to Commerce's attention any products that should be excluded.

Second, the ITC, in making its injury determination, is required to define the domestic "like product." In doing so, it considers the similarity of characteristics and uses between the domestic product and the imported products. The ITC often considers whether a product is currently produced in the United States in considering the impact of imports on the U.S. industry.

Third, once an order is in effect, Commerce has authority to clarify the scope of the order. In a scope review, Commerce determines whether a specific imported product was intended to be covered by the order and whether it has different characteristics and uses than the merchandise covered by the order. If the specifications of the product at issue do not fall within the order, Commerce has full authority to determine that it is not subject to duties.

Fourth, Commerce has authority under 19 U.S.C. § 1675(b) to review an outstanding antidumping or countervailing duty order because of changed circumstances. Commerce may revoke an order in whole or in part if it is no longer of interest to domestic producers. Changed circumstance reviews allow Commerce the flexibility to terminate relief on a particular product that the domestic industry does not produce and has no intention to produce, thus assuring that remedial duties are not imposed solely to disadvantage purchasers.

Finally, as a result of the Uruguay Round Agreements Act, all antidumping and countervailing duty orders are subject to a "sunset review" at the end of five years. An order must be revoked if it is demonstrated that injury is not likely to continue or recur after revocation. This process will allow the ITC to take into consideration the changed conditions in the industry and the market, including the ability or desire of the industry to produce particular products covered by an order.

The Undermining Impact Of A Short Supply Exception

Granting Commerce authority to waive antidumping relief during periods of short supply is unnecessary to ensure an adequate supply of a product to U.S. customers, but would create a major loophole in the law. The short supply exception would particularly reward the worst foreign offenders--those exporters whose dumping has succeeded in destroying the domestic industry's ability to invest in new plants and equipment needed to produce a competitive product.

In particular, a short supply or temporary duty suspension exception would seriously undermine the effectiveness of the cement antidumping orders. Foreign respondents would cite the increase in demand, capacity utilization, and prices occurring at the peak of the cycle to urge a suspension of the orders during a period of "short supply." Suspension of the orders and a resumption of unfairly priced imports would negate any investment incentives and would preclude any new hiring by domestic producers. The whole remedial purpose of the antidumping relief would be vitiated.

One benefit of the antidumping and countervailing duty laws is that, by eliminating the impact of unfair pricing, domestic producers are provided the opportunity to get back into production of specific products that they had abandoned. Domestic producers can also begin production of new products that they were prevented from producing because unfairly priced imports made startup unfeasible and uneconomic. A short supply provision would eliminate all incentive for producers to invest in beginning production of new merchandise, because foreign competitors can cite the lack of current U.S. production as a reason to suspend the order on that merchandise. Even if Commerce takes the willingness or desire of the U.S. industry to produce such merchandise into consideration, the possibility of a suspension of relief would act as a powerful disincentive to investment.

In addition, it is typical in many industries for domestic producers not to have the production capacity to serve 100 percent of U.S. demand. Healthy competition between domestic supply and fairly traded imports keeps prices at the level set by the market. Under H.R. 2822, however, the inability of the domestic industry to provide all the needs of the U.S. market can be construed as a "prevailing market condition" in which the continuation of antidumping or countervailing relief would be "inappropriate." There is nothing in H.R. 2822 that requires Commerce to take into account the availability of fairly traded imports. In fact, in the situation where the domestic industry cannot supply 100 percent of production, there is a possibility that H.R. 2822 could be invoked to suspend an order immediately after its issuance because domestic supply of a product covered by the order is insufficient to satisfy demand.

Finally, a short supply provision would invite abuse. Proponents argue that such a provision would only be used where U.S. producers do not produce goods meeting the precise specifications required by consuming industries. As noted above, of course, the potential for an exemption from duties in such a case would only deter domestic producers from starting production. Moreover, purchasers would seek to create loopholes to antidumping and countervailing duty relief by petitioning for suspension based on artificially narrow product specifications designed to ensure that only the imported product can meet the specifications.

A Short Supply Exception Would Be Expensive And Difficult To Administer

The Commerce Department has strongly expressed its opposition to H.R. 2822 and other short supply legislation. In addition to policy objections, Commerce recognizes that it would be extremely difficult to determine when a product is in such short supply as to justify a waiver of antidumping relief. By leaving the determination entirely within Commerce's discretion without Congressional guidance, H.R. 2822 would be especially difficult to administer.

A short supply exemption would add another level of expensive litigation to a process that is already financially daunting for many companies that need access to effective remedies. Given the breadth of discretion given Commerce under H.R. 2822, it is predictable that importers would frequently seek exemptions from antidumping and countervailing duty orders, thereby adding substantially to the cost and complexity of these cases.

Moreover, H.R. 2822 would add greatly to Commerce's administrative burden. Contrary to Congressional efforts to reduce government expenditures, implementation of H.R. 2822 would require the creation of a new and complex administrative program and the addition of many additional employees. Commerce would be required, in the absence of Congressional direction, to formulate the factors and criteria for implementing this program. In each case, Commerce would likely have to consider, among other things, U.S. producers' capacity utilization, the ability and willingness of U.S. producers to supply the product in the needed quantities and within the delivery times needed by the purchaser, the level of prices that domestic producers would charge, and whether the specifications cited by the purchaser are truly necessary for the intended use of the product. Besides adding to Commerce's burden and those of the parties, Commerce's inquiries into these matters would necessarily interject Commerce into sourcing decisions that should properly be set by supply and demand in the market.

H.R. 2822 Is Not Revenue-Neutral

The U.S. Customs Service collects substantial revenue in the form of cash deposits on entries of goods covered by antidumping and countervailing duty orders. The antidumping order on imports of gray portland cement from Mexico alone accounts for cash deposits of more than $100 million. By providing Commerce authority to suspend orders under certain circumstances, H.R. 2822 would forego the collection of future revenue to the U.S. Treasury. Under the current "pay-as-you-go" budget rules, the Ways and Means Committee would be required to raise taxes or create other sources of revenue to pay for this provision.

Conclusion

If enacted, H.R. 2822 would create an unnecessary and extremely harmful exception to antidumping remedies. It would be a strong disincentive to domestic industries seeking these remedies, which are permitted by the GATT and implement longstanding Congressional policy. The case simply cannot be made why such a deleterious amendment should be enacted. By providing a mechanism to combat unfairly priced imports, strong antidumping and countervailing duty laws serve to deflect protectionist pressures from the Congress and the Administration. Destroying these laws through weakening legislation like H.R. 2822 would go a long way toward destroying the national consensus for an open international trading system. The Trade Subcommittee should reject this ill-considered proposal.

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King & Spalding
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Counsel for the Southern Tier
Cement Committee

THE SOUTHERN TIER CEMENT COMMITTEE

Company/Headquarters	Plant Locations	
Alamo Cement Company San Antonio, TX	San Antonio, TX	
Arizona Portland Cement Co. Glendora, CA	Rillito, AZ	
Ash Grove Cement Company Overland Park, KS	Chanute, KS Durkee, OR Foreman, AR Inkom, ID	Nephi, UT Louisville, NE Clancy, MT Seattle, WA
Blue Circle Marietta, GA	Atlanta, GA Harleyville, SC Sparrows Point, MD	Calera, AL Ravena, NY Tulsa, OK
Calaveras Cement Co. Walnut Creek, CA	Redding, CA Monolith, CA	
California Portland Cement Co. Glendora, CA	Colton, CA	Mojave, CA
Florida Crushed Stone Co. Leesburg, FL	Brooksville, FL	
Florida Rock Industries, Inc. Jacksonville, FL	Gainesville, FL	
Giant Cement Company Harleyville, SC	Harleyville, SC	
Kaiser Cement Corp. Pleasanton, CA	Cupertino, CA	
Lafarge Corporation Reston, VA	Alpena, MI Davenport, IA Fredonia, KS Grand Chain, IL Independence, MO	Paulding, OH Tampa, FL Whitehall, PA
Lehigh Portland Cement Company Allentown, PA	Gary, IN Leeds, AL Mason City, IA Mitchell, IN	Union Bridge, MD Waco, TX York, PA
Lone Star Industries Stamford, CT	Cape Girardeau, MO Greencastle, IN Sweetwater, TX	Oglesby, IL Pryor, OK
Medusa Corporation Cleveland, OH	Charlevoix, MI Clinchfield, GA	Demopolis, AL Wampum, PA
National Cement Co. of Alabama, Inc. Birmingham, AL	Ragland, AL	
National Cement Co. of California, Inc. Encino, CA	Lebec, CA	
North Texas Cement Company Dallas, TX	Midlothian, TX	
Phoenix Cement Company Phoenix, AZ	Clarkdale, AZ	
Riverside Cement Company Diamond Bar, CA	Riverside, CA	Oro Grande, CA
RC Cement Co., Inc. Bethlehem, PA	Stockertown, PA Chattanooga, TN	Festus, MO Independence, KS
RMC Pleasanton, CA	Davenport, CA	
Southdown, Inc. Houston, TX	Louisville, KY Pittsburgh, PA Fairborn, OH Brooksville, FL	Knoxville, TN Lyons, CO Odessa, TX Victorville, CA
Tarmac America, Inc. Medley, FL	Medley, FL	
Texas Industries, Inc. Dallas, TX	New Braunfels, TX Midlothian, TX	
Texas-Lehigh Cement Company Buda, TX	Buda, TX	

Recent Capacity Expansion Investments In The U.S. Cement Industry

Company	Investment Project
Ash Grove	Increasing capacity of Leamington, UT plant from 650,000 to 825,000 tons. Increasing capacity of Durkee, OR plant from 500,000 to 900,000 tons (est. $85 million).
Blue Circle America	Installing new finish mill to increase cement grinding capacity at Roberta, AL plant ($22.5 million).
Capitol Aggregates	Installing new finish mill to increase cement grinding capacity at San Antonio, TX plant.
Florida Crushed Stone	Building second kiln at its Brooksville, FL plant to double clinker capacity (est. $60 million).
Florida Rock Industries	Building 750,000 ton plant near Gainesville, FL (est. $100 million).
Holnam	Doubling capacity of its Devil's Slide, Utah plant to 700,000 tons by replacing the existing wet kiln with a dry kiln (est. $75 million). Modernizing and upgrading clinker coolers in Midlothian, TX, Theodore, AL, and Santee, S.C. plants. Replacing raw mill separator with high-efficiency separator at Theodore, AL plant. Modernizing heating and cooling processes in Davenport, IA and Fredonia, KS plants to increase production and reduce fuel consumption. Investing $9.7 million in modernization of Paulding, OH plant.
Lafarge	Investing $135 million in a new facility at an existing cement plant site near Kansas City, MO, increasing capacity by 400,000 tons annually.
Lehigh Portland Cement	Upgrading kiln preheater and clinker cooling systems at Leeds, AL plant. Upgrading Macon City, IA plant to increase capacity.
Lone Star Industries	Investing $15.5 million in a new finish mill and storage facilities at Greencastle, IN plant, increasing cement capacity by 11 percent.
Medusa	Modifying preheater kiln system at Clinchfield, GA plant, increasing cement capacity by 6 percent.
National Cement	Installing a 2,100-tons per day clinker cooler in Lebec, CA cement plant.
Riverside Cement	Centralizing control rooms for gray and white cement plants.
Roanoke Cement	Investing $37 million to modernize Roanoke, VA cement plant and expand capacity from 1.0 to 1.2 million tons.
Southdown	Investing $48 million in expansion and modernization of Fairborn, OH cement plant, increasing clinker capacity by 100,000 tons per year.
Texas Industries, Inc.	Buying more than 3,400 acres with limestone deposits adjoining Midlothian, TX cement plant.

COMMENTS OF
THE STEEL MANUFACTURERS ASSOCIATION
ON H.R. 2822, THE TEMPORARY DUTY SUSPENSION ACT

March 1, 1996

These comments are filed on behalf of the Steel Manufacturers Association ("SMA") in response to the Ways & Means Committee's request for comments on H.R. 2822, the Temporary Duty Suspension Act. The SMA strongly opposes any attempt to amend the antidumping law to add a short supply or temporary duty suspension provision.

The Steel Manufacturers Association consists of 60 North American companies that operate 112 steel plants and employ approximately 66,000 people. The member companies of the SMA are widely dispersed geographically with 49 located in the United States, eight in Canada and three in Mexico. The SMA also has 126 Associate Member companies located worldwide that supply goods and services to the steel industry and 11 international member companies.

In the United States, SMA plants are located in 36 different states and 92 Congressional districts. SMA members account for approximately 40 percent of total steel production. Most SMA members are mini-mills or carbon specialty steel mills operating scrap-based electric-arc furnaces ("EAF") whose raw steel output is hot- and cold-rolled steel. Some of its members are integrated steel producers.

After a careful review of the Temporary Duty Suspension Act (otherwise known as the "short supply" proposal) currently before the Subcommittee, the SMA and its member companies have concluded that, at the current time, it is inappropriate for the Subcommittee to consider this legislation. If the Subcommittee does take up the proposed legislation, it should be defeated. The SMA companies have adopted this position for five principal reasons: (1) major amendments to the antidumping law were made only one year ago and more experience with the new law is needed before any major structural changes should be considered; (2) formal statutory authority for so-called short supply is unnecessary because mechanisms already exist to exempt products that are truly unavailable in the United States; (3) a short supply provision would undermine much of the intellectual justification for the antidumping law; (4) in this era of fiscal restraint and government downsizing, a short supply provision would be a revenue loss and would create additional bureaucracy; and (5) there is never a limit on the available supply of a product as a result of an antidumping order.

The Uruguay Round Agreements Act ("URAA"), which became effective on January 1, 1995, significantly altered and, in many ways, restructured U.S. antidumping law. The URAA changed methodologies and redefined fundamental tenets. Yet the Committee appears unwilling to wait and see whether a "short supply" problem develops under the new regime. Since enactment of the URAA, ten antidumping actions have been filed and only one, which was dismissed on a negative preliminary vote at the International Trade Commission ("ITC"), has reached conclusion.[1] The first full investigation is not scheduled to conclude until May 6, 1996.[2] The fourteen months since enactment of the new law and the dearth of final decisions simply has not provided enough information to evaluate the impact of the new law before proposing significant changes to it. Additionally, a similar short supply measure was addressed and rejected by both the Ways & Means Committee and the Senate Finance Committee during consideration of the Uruguay Round Agreements Act.

Moreover, it is only within the last few days that the Department of Commerce has even published its Notice of Proposed Rulemaking which provided both domestic manufacturers and importers with a glimpse as to how the Department of Commerce is planning on interpreting the law.[3] It would be premature to alter the structure of the antidumping law until all comments are received, the proposed rules become final, and members of the domestic and importing communities have the opportunity to see how these rules work in practice.

Second, SMA members believe that a short supply provision is completely unnecessary. Adequate mechanisms already exist in the law for importers of merchandise to avoid antidumping duties if merchandise is truly unavailable in the United States. The first mechanism is in determinations by the Department of Commerce, either during the investigation or once an order is in place. For example, during the recent series of wire rod cases, several SMA member companies voluntarily removed two separate products from the scope of their antidumping petition (high tensile tire cord quality wire rod and valve spring wire rod) when questions were raised about the industry's ability to provide these products.[4] The petitioners, after requests from U.S. customers, decided that the case would be better served by eliminating these products from the

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[1] Light-Walled Rectangular Pipe & Tube from Mexico, ITC Pub. 2892 (preliminary) (May 1995) (Inv. No. 731-TA-730).

[2] Polyvinyl Alcohol from China, Japan, Korea and Taiwan, ITC Pub. 2883 (preliminary) (April 1995) (Inv. Nos. 731-TA-726 to 729).

[3] Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking, 61 Fed. Reg. 7308 (Feb. 27, 1996).

[4] Certain Carbon and Alloy Steel Wire Rod from Brazil, 58 Fed. Reg. 62636, 62637 (prelim.) (Nov. 29, 1993).

petition. Had an order been issued in that case, it would not have covered these two products. And this example is not an isolated instance; in other cases SMA member companies have excluded products they do not currently manufacture from their petitions.[5]

Additionally, under existing law, purchasers who believe they cannot obtain needed products from domestic producers have a forum at the ITC during the injury phase of the investigation. If purchasers can show that U.S. producers do not make certain types of products, the ITC has discretion to find that there is no injury as to that specific product or as to all merchandise under investigation. SMA members companies have availed themselves of this avenue when acting as importers of merchandise not produced in the United States. For example, in one recent case, an SMA member company successfully convinced the ITC that semifinished steel billets imported into the U.S. were not made by the petitioners and, therefore could not be the cause of injury.[6]

Moreover, once an order is in effect, purchasers who are unable to obtain products from domestic sources can seek changed circumstances reviews in order to have products excluded from the application of the antidumping order. This authority has been exercised by the Department of Commerce in at least two recent instances.[7] Therefore, there are already numerous mechanisms in the law that can ensure that products which are truly in short supply are not subject to an antidumping order.

In this regard, we strongly disagree with the assertion in your January 16, 1996, letter to Rep. Amo Houghton and Rep. Sander Levin. In that letter, you commented that the "current failure of U.S. antidumping and countervailing duty laws to consider domestic availability of products subject to these proceedings continue to

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[5] In the recently concluded Oil Country Tubular Goods ("OCTG") antidumping cases, the industry excluded casing, tubing and drill pipe containing 10.5 percent or more of chromium from the scope of the inquiry because the petitioners did not manufacture these goods. These products are not covered by the antidumping duty orders. Oil Country Tubular Goods from Argentina, 59 Fed. Reg. 3782 (initiation) (July 26, 1995).

[6] Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Rods and Semifinished Products from Brazil, ITC Pub. 2662 (final) (July 1993) (Inv. No. 731-TA-572) at 37-40.

[7] See, New Steel Rail, Except Light Rail, from Canada: Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews and Intent to Revoke Order in Part, 60 Fed. Reg. 61538 (initiation & prelim.) (Nov. 30, 1995). See also, Certain Cut-to-Length Carbon Steel Plate from Canada Final Results of Changed Circumstances Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 61 Fed. Reg. 7471 (final). (Feb. 28, 1996).

hamper the competitiveness of numerous U.S. companies." In fact, the specific examples illustrated above suggest that domestic availability of products is considered and has resulted in the exclusion of such products from antidumping orders.

Third, creating a short supply mechanism could dangerously undercut the intellectual underpinning of the dumping law and would reward successful unfair traders. Under the current system, once an order is in place, it has the practical effect of reducing the supply of a given product and thereby increasing its price. With these price increases, the companies in the industry are able to overcome the injury caused by the dumped products. Eventually, as prices rise, the industry becomes healthier and other domestic manufacturers also begin to supply the product. A short supply provision would undercut this effect by increasing the supply of merchandise at lower, dumped prices. This would place downward pressure on prices, thereby precluding the industry from recuperating and discouraging further investment in the industry by other domestic producers.

In addition, enactment of a short supply provision could make obtaining injury determinations from the ITC significantly more difficult. In recent years, several ITC Commissioners have considered whether the dumping itself, as opposed to the dumped imports, is the cause of injury to the U.S. industry. When making this determination, these Commissioners calculate the effect an antidumping duty would have had on the U.S. industry had the duty been in effect during the most recent period before their determination.[8] Normally, this means that the imposition of an antidumping order would cause prices and domestic production to rise as imports withdraw from the market. However, if a short supply provision was enacted, the withdrawal of imports from the market could arguably be lessened. Therefore, the effect of the antidumping duties on the U.S. industry's ability to raise prices and generate additional revenue would be diminished. If the antidumping order has a lower price and revenue effect, as it arguably would if a short supply waiver were available, some current ITC Commissioners are less likely to find injury to the U.S. industry. This "unintended" effect could severely reduce the value of U.S. trade laws.

Fourth, the SMA believes the establishment of a short supply program would be inconsistent with efforts to balance the budget and to reduce the overall size of the federal government. Such a program is inappropriate in today's era of fiscal restraint and

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[8] See, Dissenting Views of Chairman Watson and Commissioner Crawford in Manganese Metal from the Peoples' Republic of China, ITC Pub. 2939 (final) (Dec. 1995) (Inv. No. 731-TA-724) at 15-27; see also, Views of Chairman Watson, Commissioner Crawford and Commissioner Bragg in Magnesium from China, Russia & Ukraine, ITC Pub. 2885 (final) (May 1995) (Inv. Nos. 731-TA 696-698) at 24 and 27-32, 39-52.

downsizing because it would create a revenue loss. For example, according to the 1993-1994 Review of Antidumping programs,[9] for fiscal years 1993 and 1994, the United States Treasury collected over $537 million in antidumping duties. If H.R. 2822 were enacted and resulted in a mere 10 percent reduction in duties collected, the revenue shortfall would be more than $53 million. Moreover, creating a short supply procedure would require the establishment of additional government infrastructure to administer such requests. These additional responsibilities would be added at the same time that Congress is considering the elimination or downsizing of the Department of Commerce.

Finally, and perhaps most importantly, the Committee should remember that antidumping duties are applied only to unfairly priced imports. Antidumping orders do not impose any limits on supply. Therefore, there is never truly a "short supply;" there is only a short supply of unfairly priced imports. While these duties may, as you noted in your letter of January 16, "inhibit trade," importers and domestic users are always free to purchase whatever goods and equipment they wish.

Conclusion

The Committee's consideration of any short supply provision is premature. A similar amendment was defeated by the Committee during the rewrite of the antidumping law, and with the new law in place for only fourteen months, major amendment is not timely. Moreover, the Committee is seeking to address a problem that does not exist. As we have pointed out, there are numerous avenues currently available to address any short supply concerns. Finally, and perhaps most importantly, the addition of a short supply "opt-out" could undermine the integrity of the dumping law by making it significantly more difficult to obtain an affirmative injury determination.

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[9] The Annual Report on the Status of the Antidumping/Countervailing Duty Programs FY 93 and FY 94, U.S. Department of Commerce, International Trade Administration, p. 57-58.

COMMENTS OF THE STEEL SERVICE CENTER INSTITUTE ON H.R. 2822 SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS U. S. HOUSE OF REPRESENTATIVES MARCH 1, 1996

These comments are submitted on behalf of the Steel Service Center Institute (SSCI), a trade association representing about 350 U.S. companies that process and distribute $25 billion of steel products through 975 plants across the United States. SSCI companies employ approximately 100,000 workers and supply the metal needs of 300,000 end users. Our members operate in 296 Congressional districts in 49 states.

Service centers are a vital link in the thin line of supply between steel mills and their ultimate customers. Among other functions, our members aggregate small orders that steel mills otherwise might refuse as uneconomical. Our members flatten, cut, shear, punch, burn and perform other preproduction processing so that the customer gets exactly the right steel for each particular end-use. They maintain about seven million tons of inventory and deliver, often on a just-in-time basis, to job sites and manufacturing plants all across our Nation. Without service centers, the American manufacturing economy would be less efficient and less capable to compete in the ever-expanding international marketplace.

However valuable the service provided by SSCI member companies, it is for naught when steel is not available on timely and competitive terms. That is why SSCI has worked since 1988 to ensure that America's steel trade policy had a workable short supply mechanism in place. To that end, SSCI is a member of the Temporary Duty Suspension Group and supports the comments the Group submitted to the Committee on H.R. 2822 under separate cover.

SSCI in no way seeks to weaken the trade laws or the remedies available under them. On the contrary, service centers are normally the first to feel the adverse effects of dumped and subsidized imports. Having already bought and paid for their inventories, any drop in the market price has an immediate and direct impact on SSCI members' balance sheets. Thus, for purely economic reasons, service centers want to see the integrity of our trade laws maintained. Like the domestic mills that supply us, we have always supported strong U.S. trade laws and will continue to do so.

Due to our unique position within the steel distribution chain, we also recognize in an ever-expanding global economy, the legitimate needs of steel processors, fabricators, manufacturers and other end-users must also be safeguarded. If we fail to act accordingly, we should not be surprised to see one manufacturing operation after another shrink or close as foreign components replace American components in our manufacturing processes. The mission of service centers is to ensure their customers with competitive supply so that the U.S. manufacturing base can not only be maintained, but also can expand to meet future demand in the global economy. We consider this to be a commercial and moral obligation to our workers, our communities, and those of our customers who depend upon us.

For service centers (as for the mills that supply us), it is essential that any "short supply" solution not lead to excess supply in the marketplace since we both have the same commercial interests at heart. To be acceptable and workable, any short supply mechanism considered by the Committee should rest on the five principles described below.

Temporary

Any short supply mechanism should be predicated on the temporary suspension of antidumping and countervailing duties. There are certainly some products and some particular forms of products that are not and never have been produced in the United States. They should be excluded from the scope of antidumping and countervailing proceedings but rarely are. There are many reasons for this, including: a lack of awareness by end-users (particularly by smaller companies) of the inclusion of particular products within broadly defined products under investigation; the prohibitively high cost of legal services relative to the small value of the products involved; and, a scarcity of positive precedents.

For these reasons, existing statutory authority rarely provides adequate and timely relief for products not manufactured in this country. Moreover, domestic supply is not fixed in a static

way but responds to changes in the market. Normally, a petitioner is able to point to unused capacity in its industry as one indicator of injury. In such circumstances, mills tend to be more willing and able to accommodate the special needs of smaller customers. However, as supply tightens (as normally happens after the imposition of dumping and countervailing duties), the situation often changes dramatically and with little notice. Acting with full economic rationality, mills frequently concentrate on higher-value or higher profit items and shun lower-value or lower profit products. (For current examples, see Attachment One, a letter to Rep. Robert Menendez from Baldwin Steel Company of Jersey City, New Jersey.)

Thus, a product that was in ample supply at the time dumping and countervailing duties were imposed may turn out to be unavailable in sufficient quantities in some future period. What, then, are downstream manufacturers to do? Wait for months or years until the supply/demand balance shifts and the mills are again willing and able to supply the needed input? In a competitive global economy like ours, that is often not an option. More likely, the downstream manufacturer will consider importing a more elaborated component or even moving his operation across the U.S. border to be able to continue to meet previously negotiated contractual obligations and avoid ceding the market to other offshore competitors.

Surely, a temporary problem demands a temporary solution. A short supply escape valve should work two ways. It should be turned on when domestic supply has been totally exhausted and is unable to meet the additional demand in a timely fashion. It should be turned off as soon as demand no longer exceeds available supply. Currently, there is no way to do this under existing law. Where there has been a long-term expansion in demand or a reduction in foreign offerings, there is incentive for additional investment in the domestic producing industry. A temporary short supply remedy preserves the market for such new investment, whereas a permanent exclusion of products from antidumping and countervailing duty orders tends to solidify the dependence on foreign suppliers. Enactment of H.R. 2822 would permit the administering authority to grant relief only when, and for as long as, it is needed.

Targeted

A second principle for short supply is that relief must be targeted on the unmet need documented by the petitioner. It should meet the needs that otherwise cannot be met and no more. Just as a deficient remedy leads to the flight of facilities and perhaps entire plants or their replacement by imports, an excessive remedy will lead to too much supply and an erosion of the domestic pricing structure. Both extremes are to be avoided.

How to do this? While not spelled out in the current text of H.R. 2822, the administering authority of the law should require each short supply petitioner to document his precise needs (whether it be in tons, pounds, or whatever appropriate unit). In addition, the petitioner should be required to show that all attempts to secure a domestic supply of the product in question have proved fruitless. Under the legislation, the administering authority would have the discretion to turn down requests that are unfounded and exaggerated. In addition, duty suspension on the product in need would be limited to precisely the quantity that has been shown by the petitioner to be unmet and no more. This will eliminate the potential for most abuses.

Transparent

A workable short supply system must be transparent. A mechanism cannot work well in the absence of complete and valid information. A simple way to ensure this is to publish notices regarding each request for a temporary duty suspension in the Federal Register and to invite comments on the petition from the public.

In this way, any potential producer (even if previously unknown to the petitioner) can step forward to meet the need of the petitioner. If that happens, there is no need for a temporary suspension of duties.

Timely

The essence of short supply is urgency. A procedure that is not available for years after the imposition of dumping and countervailing duties or that takes untold months to complete is the antithesis of a short supply remedy. If the aim is to ensure that American downstream manufacturers do not needlessly lose business to foreign competitors, timeliness is essential.

Tested

Judging from the protestations of some opponents of any short supply provision, it is surprising that Congress has provided the Federal Government similar relief, particularly when it relates to the procurement of domestic materials used in federally-funded construction or national security programs. Year-after-year, Congress considers numerous domestic preference proposals (particularly in appropriations legislation) designed to support and maintain the U.S. industrial base. However, in most instances, Congress is careful to protected the interests of the Federal Government when such materials become in short supply. Incorporated in many of these domestic preference proposals is a clause which, in part, waives the domestic preference requirement when domestic items to be procured are not produced in sufficient and reasonably available quantities of a satisfactory quality.

Perhaps the most elaborate test of a short supply mechanism, however, was that mandated by the Congress in 1989 as part of the Steel Trade Liberalization Program Implementation Act (P.L. 101-221). This legislation passed the House of Representatives by a vote of 354 - 10, and later the Senate by voice vote. The experience under that program may be highly instructive for the designers of any temporary duty suspension program. From October 1989 until the Voluntary Restraint Agreement (VRA) program expired in March 1992, the U.S. Department of Commerce considered 60 claims of short supply, approving 51.

Following are some salient considerations regarding the VRA program:

- More than half of the extra licenses authorized on grounds of short supply were granted to the steel mills themselves.
- The average award for finished steel products was 7,707 tons. Interestingly, the tons per award average trended downward from year-to-year. By the third year it was only 292 tons per grant.
- Every one of these decisions was made within the 30 - 60 day time limit established by the statute.
- The Department of Commerce administered this provision of the law with only minimal staffing.

In other words, the VRA experience clearly demonstrates that a short supply mechanism is feasible and that it can be done in such a way as to avoid undermining the effectiveness of the remedy. The VRA program embodied the principles of temporary, targeted, transparent, and timely. That is why it worked so well. The Congress now should transport those same principles into the antidumping and countervailing duty laws.

Conclusion

Our customers, America's downstream manufacturers, are just one component away from disaster. If any single item becomes unavailable when needed in the right quantities and the right qualities, then the manufacturer cannot ship his automobile, locomotive, computer, airplane, or any other product. However mundane the missing piece, whether it be an ashtray in a car, a tiny metal part of a spark plug, or a small bearing, its unavailability can bring the manufacturing process to a sudden halt and cripple sales.

The threat of domestic product shortages is real. No one is more acutely aware of the impact non-availability of domestic materials can have production schedules than the U.S. Government. For years, Congress has safeguarded the interests of the Federal Government when adopting domestic preference legislation by including a series of short supply relief mechanisms. In almost every instance, domestic preference requirements legislated by the Congress can be waived when the product in question is not produced domestically *in sufficient and reasonably available quantities of satisfactory quality*.

The time has come for Congress to provide a similar safeguard for U.S. downstream manufacturers who fall victim of product shortages as a result of antidumping or countervailing duty orders. Their employees and their communities deserve the minimum assurance of job security. Representative Crane's proposal that would allow for the *temporary* suspension of antidumping or countervailing duties on a specified amount of product need to address the shortage would provide downstream manufacturers that safeguard. SSCI strongly supports the enactment of H.R. 2822 this year and respectfully encourages the Committee to consider the bill at the earliest opportunity.

SSCI's Statement in Support of H.R. 2822
Attachment 1 - March 1, 1996

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Member
Steel Service Center
Institute

BALDWIN STEEL COMPANY

JERSEY CITY, NEW JERSEY • GARY, INDIANA • TULSA, OKLAHOMA

February 26, 1996

The Honorable
Robert Menendez
911 Bergen Avenue
Jersey City, NJ 07306

Dear Congressman Menendez:

Baldwin Steel Company is a Steel Service Center specializing in Flat Rolled Sheet Steel. Baldwin has been in business in NJ for over 55 years. We employ 86 people in NJ and 81 outside NJ.

We urge you to consider the negative effects of the antidumping and countervailing duty laws we have experienced over the past several years.

We receive orders for items that are not available in the US. The products are unavailable from both mills and other domestic suppliers due to the inability or unwillingness to produce them. The only available sources are through foreign suppliers where the product is subject to excessive tariffs and duties (in one case over 60% increase in our cost). In some cases the customers are not willing to pay the premiums on these products which results in loss of sales revenue and profits. In other cases the customers are willing to pay the premiums if we decrease our profit on the orders which also results in lost profits. Some specific examples of products which are not produced in the US are: Galvanealed A40 CQ .097 x 72 x Coil, Galvanized G90 .176 x 48 x Coil and Galvanized G60 & G90 .016 x 52 x Coil Paintline Quality for Continuous Coil Coating.

On certain items there is limited availability and only produced by a single domestic source. The supplier is aware that they are the only domestic source for the material and that it will have an excessive cost if brought in from foreign sources required to pay excessive tariffs. Because of this we have been forced to pay unreasonable market prices resulting from the lack of competition in the US. An example of this is: Galvanized Structural Grade E G60 & G90 .008 x 27.562 x Coil.

In addition to the above, there are shortages of products which are domestically produced but not in sufficient quantities. In the past, during shortage periods, we were able to supply our customers through foreign sources in order to allow them to continue

operations and production of American products. Currently, however, due to the negative cost effects of the antidumping and countervailing duty laws, it is not feasible to competitively source the material to minimize the effect of the shortage to us and our customers. This again results in lost profits and production. An example of this is Galvanized G60 & G90 .014 x 48 x Coil.

The solution to our problem is simple. Rep. Phil Crane introduced H.R. 2822, the Temporary Duty Suspension Act, to provide an escape valve for situations like this. The bill would empower the Commerce Department to suspend antidumping and countervailing duties on foreign products not produced or in short supply domestically. This provision would permit our customers to continue to get the supply they need until domestic supply becomes available. They should of course have to document their needs, and all claims should be subject to public comment to avoid unfounded claims.

A similar system was in place during the final two and one half years of the steel voluntary restraint program (1989-92). It worked well, required a minimum of public and private resources, and enabled scores of American manufacturers to continue their US operations without disruption.

The bottom line is that a temporary duty suspension provision such as Mr. Crane proposes would reduce the risk that downstream American manufacturers will be unable to meet international competition. This can be done without in any way reducing the effectiveness of the relief that is due injured domestic industries under the antidumping and countervailing duty laws.

For the sake of our customers and the 167 workers at Baldwin, we urge you to support H.R. 2822 and to work for its passage during this session of Congress.

Sincerely,

Robert A, Hirsch
President

cc: Robert Carragher
Vice President for Governmental Affairs, SSCI

SSCI's Statement in Support of H.R. 2822
Attachment 2 - March 1, 1996

SELECTED EXAMPLES OF CURRENT UNITED STATES LAW CONTAINING A WAIVER OF DOMESTIC PREFERENCE RELATING TO THE ACQUISITION OF STEEL

Surface Transportation Assistance Act of 1982 (P.L. 97-424) - Section 165 (a) of the Act provides that "the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act . . . unless steel, cement, and manufactured products used in such products are produced in the United States." Subsection (b) of Section 165 provides that "[T]he provisions of subsection (a) of this section shall not apply where the Secretary finds . . . (2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;" [Emphasis added].

Department of Defense Appropriations Act for Fiscal Year 1996 (P.L. 104-61)

- Section 8022 of the Act provides that "[N]one of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States . . . *Provided further*, That when adequate domestic supplies are not available to meet the Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis....." [Emphasis added].

- Section 8047 of the Act provides that "[N]one of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: *Provided*, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: *Provided further*, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying . . . that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis . . . ." [Emphasis added].

- Section 8099 of the Act provides that "[N]one of the funds appropriated by this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: *Provided*, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing . . . that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis . . . ." [Emphasis added].

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March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: ***TR-17: Written Comments on Miscellaneous Trade Proposals***

Dear Mr. Moseley:

The Subcommittee on Trade of the Committee on Ways and Means has recently requested written comments for the record concerning various miscellaneous trade proposals. Stewart and Stewart is a law firm that has represented many companies and industries in antidumping, countervailing duty and escape clause proceedings over the last four decades. Most of our representations in such proceedings have been on behalf of petitioners. I submit these views in my individual capacity. The views presented do not necessarily reflect the views of our firm's clients or of other members of the firm.

I wish to comment on three proposals: H.R. 2822 (temporary duty suspensions); H.R. 2795 (perishable agricultural products, definition of domestic industry and like product under 201 cases); Presidential waiver from potential dumping liability for highly enriched uranium.

I. H.R. 2822

H.R. 2822 would provide the Department of Commerce with the discretion to suspend antidumping and countervailing duties for up to one year, if Commerce determined that "prevailing market conditions" related to the availability of the product in the United States make imposition of such duties inappropriate.

This proposal is neither necessary, justified nor appropriate. Indeed, the proposal would continue or exacerbate the problem (injurious price discrimination) while ignoring the reasons behind reduced domestic product availability -- relief is available late, is only prospective and is often only partially effective because of evasion, circumvention and duty absorption by importers related to the foreign producers engaged in dumping. Congress should address the causes of domestic industry problems and not pursue an approach which would complicate the ability of injured industries to regain competitiveness and market share. Let me explain why.

It is the purpose of our unfair trade laws to see that competition takes place in the U.S. market place on the basis of true comparative advantage and not through price discrimination or subsidization. To the extent that relief is not made available early, domestic producers may be forced to close plants, and to reduce capital expenditures, research and development and employee training programs. Yet, the very fact of plant closings and the other manifestations of harm to domestic producers mean that purchasers of products will find less domestic product or less competitive domestic product by the time relief is provided. Over the forty years that members of our firm have handled traded cases before the Commission, it

has been our common experience that industries have to be experiencing substantial economic harm before there is a reasonable chance of establishing either material injury or the threat thereof.

At the same time, our unfair trade laws do not impose penalties upon foreign producers who dump or receive subsidies on their products. Foreign producers and their importers are simply required to sell or buy product at a fair price or have the importer pay the difference to the U.S. government. Domestic producers are not compensated for past harm. Treble damages are not assessed. Yet, the continuation of dumping in such situations can significantly restrict the ability of U.S. companies to reinvest, reopen facilities, increase R&D or add personnel or upgrade training. Thus, Congress should consider ways to speed relief and make it time effective. Such actions would make more domestically-produced product available earlier.

Users of imported items are often concerned about the logic of paying fair value (i.e., non-dumped prices) for imported merchandise if such products are in fact not produced in the U.S. The logic presumably is that bargains that do not hurt domestic producers should not be eliminated. There is no logic to any claim of "shortage" of product by reason of antidumping or countervailing duty orders, as the orders do not restrict supply; rather foreign producers and importers are encouraged to charge and pay a fair value.

Domestic producers would agree that items which are truly not produced in the U.S. and for which U.S. producers have no intention of producing under conditions of fair trade should be excluded from the order. Indeed, Commerce and the International Trade Commission during investigations and Commerce after orders are issued routinely exclude merchandise or "clarify" the scope of an outstanding order to eliminate items where there is no interest. See, e.g., Certain Flat-Rolled Carbon Steel Products from Argentina, et al, Inv. Nos. 701-TA-319-332, 334, 336-342, 347-353 (Final) and Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), Vol. II at I-3 - I-5, n. 1, Publ. 2664 (August 1993)[grade X-70 plate was excluded from the carbon steel plate investigation; certain hot-rolled seatbelt retractor spring steel and certain hot-rolled carbon bandsaw steel were excluded from the hot rolled sheet investigation; certain shadow mask steel was excluded from the cold rolled steel investigation; flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating as well as certain clad stainless flat-rolled products less than 4.75 mm in composite thickness were excluded from the corrosion-resistant carbon steel flat products investigation]. Similarly, even after an order is issued, if there are products covered by an order that are not of interest to the domestic industry, the order can be modified. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Canada, 60 Fed. Reg. 61,536 (Dept. Comm. 1995).

In short, there has been no showing that the existing system does not adequately address the alleged problem. However, false price signals in the market due to dumping or subsidization can and do result in companies abandoning products or not commencing production. Without the corrective influence of a dumping order, such domestic producers will never receive the price signals in the marketplace needed to determine whether it is rational for them to resume or commence production.

If Congress wants to minimize market disruption for producers and users alike, it should focus its efforts on assuring that the laws are administered to provide relief as early as possible, provide incentives to foreign producers to engage in fair pricing and improve the ability to discourage evasion of orders. These issues are discussed infra.

Finally, while not the argument generally made, there have been suggestions by some that there is a "need" to rebalance U.S. trade law to take into account the interests of consumers. The basis for this claim is usually the controversial ITC study released last summer. See The Economic Effects of Antidumping and Countervailing Duty Orders and Suspension Agreements, Inv. No. 332-344, USITC Pub. 2900 (June 1995)("ITC 1995 Study"). Without going into a detailed discussion of the issue in this submission, two simple points should be observed:

(1) correction of dumping eliminates a false price advantage for domestic purchasers over their foreign competitors that derives from price discrimination engaged in by foreign producers; thus, U.S. purchasers are not disadvantaged where price discrimination is corrected; they simply lose a false advantage;

(2) the Commission report relies on an economic model that was used in an earlier study by the Commission *despite the fact that the model used has been described by the Commission staff as not the most appropriate to measure costs and benefits on trade actions for particular products.* Attached for the Committee's consideration is an extensive analysis my firm prepared for a client of the model used in the prior ITC investigation 332-325. The same model criticized in the attached document was used in the 1995 ITC Study [page at 4-1]. Moreover, many of the assumptions used in the study (such as the claim that dumping duties are passed through 100%) are contradicted by market realities. Finally, the report ignored the significant evidence of record that for some products, the average price paid by consumers can actually decline following relief under an order and the ability to reinvest. In short, there is no credible evidence that a rebalancing of the law's structure or purpose is needed.

H.R. 2822 as currently drafted would exacerbate the harm experienced by domestic industries by rewarding foreign producers who have been most effective at harming domestic competitors. In cases where foreign dumping is able to prevent a domestic industry from becoming established or to force domestic producers out of a particular market, H.R. 2822 would reward the dumping company with a waiver of dumping liability. This cannot be the correct - or intended - result.

Congress Should Consider Other Measures Which Would Assist Purchasers of Goods Subject to AD/CVD Orders

Instead of pursuing legislation that would have the effect of compounding the injury of domestic producers, Congress should consider other measures which would in fact reduce the problems faced by producers and the perceived problems of purchasers:

(1) Congress should ensure that relief is available early. Early relief both reduces the dependence of purchasers

on artificially low prices and prevents U.S. producers from cutting back on capital expenditures, research and development, closing facilities and reducing employment. Current administration of the law makes a finding of injury unlikely and relief almost never available without significant shuttering of facilities. See, e.g., ITC 1995 Study, supra, at x (discussing the very low percentage of affirmative injury determinations between 1980 and 1993 with virtually no affirmative threat determinations).

(2) Second, Congress should safeguard that circumvention of antidumping and countervailing duty orders is not rewarded with evasion of liability. Current law and administration essentially encourage foreign producers to circumvent orders. This encouragement takes the form of escape of liability for every entry that has been liquidated and the generally prospective nature of relief once a scheme has been discovered and addressed. When foreign producers can easily circumvent orders, the market signals for domestic producers are distorted, reducing both profitability and reinvestment in people, equipment, technology and facilities.

(3) Congress and the International Trade Commission should make follow-on cases easier, not harder, to win. There have been many cases at the ITC where, following a finding of injurious dumping in a first case, domestic producers have begun reinvestment only to be confronted with substantial dumping from additional foreign sources. The ITC has often taken the fact of reinvestment as a sign of lack of injury and rendered a negative injury determination. Stated differently, domestic producers are penalized for taking the very action envisioned by Congress under the law -- reinvesting and re-employing in light of the first finding of injurious dumping. Such a result is counterproductive.

(4) Congress and the Administration should ensure that relief when provided is effective. There are many discretionary decisions by Commerce that can significantly undermine the effectiveness of outstanding orders. Let's consider just two:

(A) Reimbursement. In recent years, Commerce has construed its regulations, 19 C.F.R. 353.26, in a manner that meant foreign producers would only be found to have reimbursed dumping duties to importers where: (a) the importer was unrelated to the foreign producer and (b) the foreign producer reimbursed in the most direct manner -- a check denominated as being for reimbursement. Not surprisingly, few, if any situations of reimbursement have been found even in situations where there is continued serious price depression in the resale market. Concerns about price manipulation (lowering the price of products not covered by an order), extension of payment terms between parent and subsidiary, customs undervaluation, inflated royalty and other payments -- these are all possible ways of foreign producers reimbursing dumping duty liability. Recently, Commerce has accepted that its construction of reimbursement is bad policy with regard to the treatment of related parties. The agency, however, continues to narrowly define the situations in which reimbursement will be found largely eliminating the corrective effect of the regulation.

(B) Duty Absorption. In some antidumping orders, most or all of the foreign producers export to the United States through related party importers. In some of these cases, dumping duties continue to be

found year after year, often double-digit amounts. The presence of continued dumping in situations where the importer is a subsidiary of the foreign producer is prima facie evidence of duty absorption. Duty absorption constitutes the failure of foreign producers and their importers to correct market prices. Where importers are unrelated to foreign producers, domestic producers generally find reasonably prompt price correction in the market as importers have to pay the full price either to the foreign producer or to a combination of the foreign producer and the U.S. government. Unrelated importers can be potential customers for domestic product. In related party situations, however, it is quite common for price depression and suppression to continue as related party importers choose to "eat" or absorb the antidumping duties that must be paid. Related party importers are not generally potential customers of domestic producers. Hence, the duty absorption retards domestic producer ability to reinvest and regain competitive strength.

Such problems seriously undermine the effectiveness of the laws and hence reduce the ability of domestic producers to respond to inquiries from domestic customers.

(5) Congress should consider changing U.S. law so that any dumping or countervailing duties actually collected are disbursed to the petitioning companies and workers for R&D, capital expenditures, and retraining. Such a statutory change would speed the ability of domestic producers to regain their competitiveness. Such payments would also serve as a strong incentive to foreign producers to charge fair prices to avoid the differential being paid to injured domestic producers. Claims were made last year that such a provision would be WTO illegal -- a statement that is factually wrong. At most, such payments <u>might</u> be viewed as a domestic subsidy. Such subsidies are <u>not</u> prohibited. Companies concerned that they might be subject to countervailing duty actions abroad for causing harm to foreign producers could, of course, simply opt rot to accept the funds.

2. *H.R. 2795*

The International Trade Commission in making determinations of whether domestic industries are materially injured or seriously injured conducts an investigation to obtain information on the specifics of the particular industry and market situation. U.S. law and international agreements have recognized that industries and competition can be defined in terms of whether products are produced in certain regions for regional consumption or whether there is temporal and location overlap in how products are sold. See, e.g., Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 Article 3.3 (cumulation of imports permitted where "conditions of competition" indicate it is appropriate), 4.1(ii)(regional industry factors); 19 U.S.C. 1677(4)(C)(regional industry defined) and 1677(7)(G) (cumulation). Even in situations where the Commission has not found regional industry criteria to be met, the Commission has examined whether imports which primarily enter and compete in one market area have negatively impacted producers in that area. See, e.g., <u>Fresh Cut Roses from Colombia and Ecuador</u>, Inv. Nos. 731-TA-684-685 (Final), USITC Pub. 2862, at I-21 n.124 (March 1995); <u>Potassium Chloride from Israel and Spain</u>, Inv. Nos. 303-TA-15, 701-TA-213 (Final), USITC Pub. 1596, at ___ (Nov. 1984).

Comments in Response to TR-17
March 1, 1996

In the agricultural and horticultural arena, there are many products which have distinct growing seasons in particular parts of the country. While such products may be "identical" regardless of where grown, if the products are highly perishable, growers in the different regions will essentially not compete and not be capable of competing for significant parts of the year. Since there is no meaningful competition for large parts of the year by growers in such situations, the issue has arisen as to how the Commission should treat imports that effectively compete mainly with one of the regions of the countries. The Commission in 1995 in a "provisional remedy phase" determination under the U.S. escape clause decided that U.S. law should be construed to require an examination of a "national" industry in such situations despite the lack of meaningful competition between the imports and domestically grown product in areas other than Florida for much of the year. Fresh Winter Tomatoes, Inv. No. TA-201-64 (Provisional Relief Phase)(April 1995).

H.R. 2795 is an effort to clarify U.S. law to permit an examination of injury and a definition of industry in perishable products along lines that reflect commercial reality in the marketplace. The bill should be adopted by the Committee. The Committee report should reflect that the provision is available to any agricultural or horticultural product that is highly perishable in nature.

Presidential waiver from potential dumping liability for highly enriched uranium

The Administration's proposal to obtain authority to waive coverage by Title VII for certain enriched uranium imports presents certain general concerns about the administration of U.S. trade laws.

U.S. trade laws are part of the compact with business and labor for the support of a liberalized trading system. At their core, the antidumping and countervailing duty laws provide domestic producers the promise that jobs and property interests will not be taken away by foreign product where domestic industries are in fact competitive. The remedy provided -- requirement that the importer either pay a fair price or pay the difference to the U.S. government as an increased duty -- is not obviously at odds with national security interests in enriched uranium or other factual situations. Thus, it is not clear why waiver authority is needed in the situation involving enriched uranium. Other options would appear to be available within Title VII to adequately deal with any special circumstances -- review and modification of the suspension agreement or an expedited administrative review being just two. Other legislative solutions (e.g., legislation permitting pass through of costs for United States Enrichment Corporation for a period of time) that do not require U.S. producers and workers to be deprived of their existing statutory rights to fair pricing where injurious price discrimination has been found should also be available. Congress and the Administration should focus first and foremost on finding an acceptable solution that does not create exemptions to our trade laws' coverage.

Nonetheless, if there is to be an exception to coverage because of perceived overriding national security interests and lack of acceptable alternatives, the exception should be very narrowly drawn and should be coupled with statutory obligations to leave domestic producers and their workers in a position equivalent to that which would have existed under conditions of fair trade. Nothing in the draft legislative language appears to make any effort to leave producers and workers in an equivalent position. I am informed that there may be other arrangements which may partially limit the harm to domestic companies and their workers. Such arrangements are not part of what is before the Committee and should be if the proposal is given active consideration.

Thank you for the opportunity to submit these written comments.

Respectfully submitted,

Terence P. Stewart
Managing Partner

Enclosure

COMMENTS OF SUN MICROSYSTEMS ON H.R. 2822
SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS
MARCH 1, 1996

I. INTRODUCTION:

Mr. Chairman and Members of the Committee, Sun Microsystems appreciates the opportunity to submit comments on H.R. 2822, the Temporary Duty Suspension Bill. Chairman Crane has shown leadership in tackling this surprisingly controversial subject. This effort is consistent with Chairman Crane's dedication to open trade, a policy that enables companies such as ours to compete and win in the international marketplace.

Sun Microsystems is an "enterprise" computing vendor that designs and develops computer systems, semiconductors and software. We employ over 16,000 individuals worldwide, the vast majority of whom reside in the United States. We estimate that Sun subcontractors employ well over 30,000 individuals in the U.S. Our revenue for the current fiscal year is expected to exceed $7 billion, over half of which will be earned outside of the U.S.

II. A BUSINESS FOR THE INFORMATION AGE

Sun Microsystems competes in a global market that is very different from traditional manufacturing businesses. These differences fall into two general, interrelated areas:

1. Technology is Perishable
   a. Every 18 months, improvements in technology double the amount of computing power a dollar will buy, therefor yesterday's technology is not marketable today. Our product cycles are 12-18 months at most.
   b. We are forced to "reinvent" ourselves every two years in order to remain competitive in our marketplace.
   c. Close to 75 percent of our earnings come from products that did not exist two years ago.

   Because of this, speed is the watchword of our industry, and time to market is a critical measure. If we miss one product cycle because we don't have access to the best and most current technology, we are seriously hurt, if we miss two product cycles, we are mortally wounded. If we are not able to get a component from a United States supplier, we must be able to get that component from a foreign supplier; we cannot wait while the United States company develops the technology and/or capacity to meet our needs.

2. Our Market is Global
   a. Over half our revenue comes from sales to customers outside the United States.
   b. By the year 2000, our industry expects to earn at least 75 percent of its revenues abroad.

   This means that if we are not able to source the most competitive components from US suppliers, and we are prevented from sourcing them from foreign suppliers, we will not be able to provide a competitive product to over half of our market. This also may mean that our US customers will be denied the benefit of the most advanced products for their own use.

III. OUR IMPRECISE DUMPING LAWS:

While we support the antidumping and countervailing duty laws when they are used to combat illegal and injurious dumping, they do not achieve their intended purpose in situations where no domestic industry exists, or where there is a manifestly insufficient supply of comparable domestic products. In these situations they deny US industry access to competitive parts without benefitting domestic suppliers. Our foreign competitors, who are not constrained in their ability to purchase parts, are then able to offer more competitive products at more competitive prices and plunder our market share.

The following case study is a good example of what can happen to our industry when the dumping laws are applied in an imprecise manner. In 1991, 63 percent antidumping duty margins were imposed on flat panel displays from Japan (critical components in computers). These duties were assessed even though only a de minimis amount of the product was produced in the US. Furthermore, much of the domestic supply did not meet the strict specifications of computer makers, because the domestic product was designed for fighter planes, not computers. Because U.S. production could not meet the demands of U.S. computer makers and the antidumping duties applied to all imports from Japan, a number of U.S. computer companies were forced to move manufacturing of laptop and portable computers offshore in order to compete with computer manufacturers based in Japan. Ultimately, the flat panel petition was withdrawn, however, the manufacturing jobs had already left this country. This is a perfect example of how our dumping laws can backfire. The unintended consequence is that the U.S. companies were hurt and US jobs were lost.

IV. A SENSIBLE SOLUTION:

We believe that H.R. 2822, the Temporary Duty Suspension bill, will help guarantee that we do not repeat the experience of the flat panel display case. This bill will give the Department of Commerce the authority it needs to suspend antidumping and countervailing duties temporarily, and for a limited quantity, on one or more specific products needed by American industry when such products are not available from US producers. By providing for a <u>temporary</u> suspension, this legislation would preserve the incentive for US producers to ramp up and supply the dumped good in a sufficient quantity to satisfy domestic demand. Once a sufficient supply of domestic parts is available, the duties on products dumped by foreign firms could be reinstated. This legislation provides the proper balance necessary to protect domestic suppliers of critical parts, while creating the needed flexibility to guarantee domestic users an adequate supply of the essential components they need.

The approach on which H.R. 2822 is based has worked in the past. This bill is modeled on a European Union provision that has been in place for nearly one year. This provision has been administered effectively without undermining any European firms and it is WTO legal. In addition, the Commerce Department has had experience administering a short supply provision under the steel VRA program. Under this program, the department had the authority to permit the importation of additional quantities (above the aggregate quantitative limitations under the VRAs) of a product that was in short supply. Had this procedure not been in effect, many U.S. steel producers could have been forced to move offshore to stay in business.

V. CONCLUSION:

H.R. 2822 is a sound bill that is based on solid precedent. This measure gives the Commerce Department the flexibility it needs to administer our dumping laws with precision. At the same time this bill does NOT weaken our dumping laws. The Commerce Department would retain all of the current authority it has to protect domestic producers from injurious dumping while giving US purchasers of critical parts the temporary relief they need to maintain their U.S. based business operations. We have seen how unrestrained dumping can harm U.S. companies. We have also seen how dumping laws that lack flexibility can harm U.S. companies. H.R. 2822 strikes the right balance and we urge its adoption.

UNITED STATES OF AMERICA
HOUSE OF REPRESENTATIVES

COMMENTS OF THE TEMPORARY DUTY SUSPENSION GROUP ON H.R. 2822

SUBMITTED TO THE COMMITTEE ON WAYS AND MEANS
MARCH 1, 1996

These comments are submitted on behalf of the Temporary Duty Suspension Group ("TDSG"), a group of U.S. corporations and trade associations, whose members employ well over one million American workers, account for a considerable share of the economy and of U.S. exports. The TDSG is a highly diverse group--its membership includes oil and gas producers, pipeline companies, petroleum products manufacturers, makers of heavy machinery and transportation equipment, steel producers, distributors and steel using manufacturers, manufacturers of computers, peripherals and makers of a vast array of high-technology equipment. Members of the Group are listed below.

The TDSG strongly supports the prompt enactment of the temporary duty suspension ("TDS") legislation to enhance the competitiveness of U.S. industry and specifically urges the passage of the bill introduced by Congressman Crane on December 21, 1995 (H.R. 2822).

TDSG members strongly support the vigorous and effective enforcement of the antidumping and countervailing duty laws of the United States. Indeed, a number of the TDSG members have benefited from the dumping laws in the past in that they manufacture U.S. products that have been protected by U.S. antidumping or countervailing duty orders (such as semiconductors). TDSG does not support weakening those laws; nor do we favor, by our support of H.R. 2822, the re-opening of the debate on the structure and character of the trade laws, including the calculation of dumping and subsidy margins, the determination of injury or threat of injury, the collection or assessment of antidumping and countervailing duties, or any other aspect of those laws. Indeed, passage of this bill may avoid the basic questioning of these laws by alleviating a serious and, we are convinced, unintended consequence of those laws: the danger to the competitiveness of much of American manufacturing.

The TDS Group supports this legislation because it preserves the existing law while permitting the administering authority to suspend duties in appropriate cases. This is not an issue of price: the bill would not authorize inquiry into the price of an available U.S. product. Instead, the inquiry would be into whether the needed product is available from a U.S. producer. If it is, there would be no relief under the bill.

H.R. 2822 would allow the Department of Commerce to suspend antidumping and countervailing duties temporarily, and for a limited quantity, on one or more specific products needed by American industry when they are not available from U.S. producers. Each exemption would need to be approved by the administering authority (under current law, the Department of Commerce).

The trade laws do not now differentiate between products within a broad "class or kind of merchandise" on the basis of whether they are available from United States sources. There is no reason why these laws should restrict international commerce in merchandise that is not available in the United States. Yet, as currently written, they have exactly that consequence. Moreover, as we demonstrate below, the provisions of the trade laws do not adequately address this unintended consequence, despite protestations of others, including the Administration, to the contrary.

A temporary duty suspension provision could prove vital to the health and competitive position of U.S. companies that rely on imported components and raw materials, as well as their workers and communities. It would strengthen, not hamper, the effectiveness of U.S. trade laws.

Why a Temporary Duty Suspension Remedy Is Needed

Under current law, antidumping and countervailing duties are imposed on a "class or kind of merchandise," a broadly inclusive set of products, without regard to whether all of the products in the "class or kind" are made domestically. Similarly, the International Trade Commission makes a broad assessment of U.S. producers of a "domestic like product," when determining whether imports cause or threaten material injury to a U.S. industry. In both cases, the Department of Commerce and the ITC do not exclude from their analysis products that may fit within the broad categories they analyze, but are not made in the United States. Thus, particular products that are or may become unavailable from domestic producers are included within the scope of an order. Clearly, imposing dumping and countervailing duties on products that are not available from domestic producers is bad policy. It hurts U.S. manufacturers who must compete globally, but does not reduce injury to any domestic industry.

The Committee is well aware that U.S. manufacturing has changed dramatically over the last few decades. Very few industries in the U.S. any longer manufacture products entirely from domestic components and raw materials. Auto producers, steel makers, manufacturers of semiconductor chips, aluminum and copper producers, just to name a few, are all dependent on imports of components and raw materials to some degree, and all are to some extent competing globally, against foreign competitors in our market and in export markets.

The vulnerability of U.S. users is heightened in situations in which the foreign supplier provides relatively small volumes of highly specialized goods falling within the broad scope of an antidumping or countervailing duty order. For foreign suppliers, the rational calculation is to weigh the cost of defending oneself in an antidumping or countervailing duty proceeding (including administrative reviews) against the possible profits on sales to the U.S. In a growing number of instances, foreign producers decide against incurring large legal costs relative to the possible benefits. In such cases, the Commerce Department resorts to "best information available," often generating prohibitive margins.

If material injury is subsequently found, who loses? The foreign producer may have to give up a small volume of exports to the U.S.; his customers, by contrast, may be deprived of most or even all of their supply of a needed input. The inevitable result is that what used to be made in the U.S. will be made elsewhere and imported. American manufacturers, their workers and their communities are the real losers in such a scenario.

The changing structure of global production means that the antidumping and countervailing duty laws can unnecessarily penalize U.S. industrial users of imported products. This problem is particularly acute when the product subject to an order cannot be supplied domestically in a timely fashion. This does not happen in every case, but it can happen without warning or anticipation. When it happens, the law needs, but does not now have, a time-sensitive mechanism for avoiding unnecessary injury to American manufacturers without harming the petitioning industry. The TDS bill provides this mechanism.

Comments on H.R. 2822

Antidumping and Countervailing Duties Affect Availability of Products in the U.S. Market

There can be no question that high import duties, including antidumping/countervailing duties can substantially affect the availability of imported products in the U.S. The average antidumping duty margin has been over 50 percent in recent years. This is *higher* than the average Smoot-Hawley tariffs, which were a major cause of the collapse of world trade in the '30's. We do not quarrel with the existence of these duties in appropriate circumstances; but we believe that, where there is no injury to a domestic petitioner from imports, there is no justification for requiring these duties to be deposited or assessed.

The uncertainty of how much duty will actually be required on imported products subject to trade remedy cases further restricts the availability of imports. Under the U.S. system, actual antidumping and countervailing duties are not assessed until years after importation. Only a deposit of estimated duties is made at the time of entry. Assessed duties may be higher or lower than the deposit amount. Where foreign producers or U.S. importers cannot accept the uncertainty, they can cease importing products subject to antidumping or countervailing duty orders. This in turn denies these products to U.S. manufacturers. They must either go out of business in the U.S. or find alternative production inputs. If the latter is not possible, then the former is inevitable.

The lack of a mechanism to address this problem is to do damage to the competitive position of U.S. companies. There are numerous examples of this phenomenon, including (but not limited to) the following:

- **Example 1:** In 1991, 63% antidumping duty margins were imposed on flat panel displays from Japan (critical components in laptop computers), even though there was only a very small amount of production of these products in the United States. Even though U.S. production could not remotely supply U.S. demand, the antidumping duties were applied to all imports from Japan. As a result, U.S. computer companies were forced to move manufacturing of laptop and portable computers offshore in order to compete with Japan-based computer manufacturers. While the *Flat Panels* petition was ultimately withdrawn, the manufacturing jobs had already left the country.
- **Example 2:** Currently, there are antidumping orders on antifriction bearings from 9 countries. Many users of bearings in the United States require highly specialized products which U.S. producers do not make. Foreign bearings users can incorporate specialty bearings into finished products and import them into the United States without being subject to the antidumping and countervailing duties on bearings. U.S. users of these bearings are hurt, even when no U.S. producer benefits from the protection.
- **Example 3:** During the antidumping investigations of carbon steel wire rod in 1993-94, the imposition of preliminary dumping duties prevented U.S. manufacturers of steel wire and wire products from obtaining certain types of wire rod which were unavailable from domestic producers. In addition, there were severe shortages of even basic types of wire rod, leading to allocations, cancelled orders and delayed deliveries. The unavailability of wire rod threatened severe economic harm to a vigorous and profitable U.S. industry, and it encouraged foreign competitors to target the U.S. market for downstream steel wire and wire products.

Although the U.S. International Trade Commission eventually made findings of no injury and terminated most of these investigations, this experience demonstrates the need for a mechanism to provide relief in cases when domestic industries cannot obtain essential raw materials from sources in the United States.

- **Example 4:** A manufacturer of steel line pipe receives an order for pipe that required a certain specification of steel plate. The plate was unavailable due to certain testing requirements not performed by U.S. suppliers, but commonly done in European plate mills. The U.S. supplier plans to install new testing equipment within one year, but cannot fill the order at this time. As a result, the pipe maker must bid on the project using plate subject to antidumping and countervailing duties. The bid price is far higher than a bid from a foreign pipe maker, and the U.S. pipe mill loses the order.

The above examples illustrate the problem of the rigid application of antidumping and countervailing duties to products that cannot be obtained from domestic sources. In each case, a specific quantity of products could be allowed to enter the United States free of antidumping or countervailing duties without any injury to the domestic industry that brought trade petitions, and without undermining the effectiveness of the relief for the petitioners.

There Is Ample Precedent For A TDS Procedure

Laws designed to protect one industry may have the unintended effect of harming upstream or downstream U.S. producers. The U.S. has long recognized that such laws must be finely tuned to ensure that these laws are in fact providing protection and not inordinately damaging other interests. For example, many statutes that are designed to protect U.S. industries have provided for waiver of certain restrictions in situations involving products, materials, or goods in "short supply." The theory underpinning these exceptions is all the same -- that is, that applying restrictions to products that cannot be obtained in the U.S. hurts downstream U.S. manufacturers but does not help any domestic industry.

One analogous precedent is the short supply procedure that was part of the steel voluntary restraint agreements ("VRAs"). The short supply procedure provided an effective mechanism for relief from the quotas under the steel VRAs where a particular product was not available domestically. Under this mechanism, the Commerce Department had the authority to permit the importation of additional quantities of a product that was in short supply above the aggregate quantitative limitations under the VRAs. Application for such relief could be filed by a U.S. producer or consumer of the product; a U.S. importer/distributor of the product; or a foreign producer of the product. The Department processed 61 steel short supply applications from 1989-1992. Without the short supply procedure, many U.S. producers could have been forced to curtail U.S. operations due to lack of needed steel inputs. Indeed, preventing this unfortunate result was the principal reason for the short supply procedure. This short supply procedure terminated with the expiration of the VRAs.

Other statutes that include the concept of waiver in situations of "short supply" include: the Buy American Act (41 U.S.C. § 10a) (exempting materials or supplies that are not mined, produced, or manufactured in the U.S. in sufficient and reasonably available commercial quantities of satisfactory quality); the Convict-made Goods Statute (19 U.S.C. § 1307) provides for an exemption on the prohibition of importation of convict-made goods when goods are not mined, produced, or

manufactured in such quantities in the United States as to meet the consumptive demands of the U.S.); the Foreign Assistance Act of 1974 (22 U.S.C. § 2423) (authorizes the President to contravene other restrictions imposed by the Foreign Assistance Act in order to secure materials in short supply); and the Export Administration Act of 1979 (50 U.S.C. App. § 2408) (authorizes an exception to the applicable controls when an item cannot be obtained except through import--i.e., it is in short supply).

Existing Procedures under the Trade Laws Are Inadequate to Address the Problem

Existing procedures do not adequately address the Temporary Duty Suspension Group's concerns about lack of available domestic supply of goods subject to antidumping and countervailing duties. The available procedures can theoretically be made to address some of these concerns. However, the main problem is the lack of flexibility in the law to remedy temporary conditions of unavailable supply, which could force U.S. companies offshore and render them unavailable as customers when a temporary shortage is removed.

First, the current law does not directly consider the availability of a particular product from United States producers. For example, Commerce has changed the scope of a petition during an investigation (not after), but only on the ground that the petitioner has requested a change in scope. In scope determinations after an order is in place, Commerce has expressly held that whether a product is made in the United States is irrelevant [see, e.g., Television Receiving Sets, Monochrome and Color, from Japan, Final Scope Ruling, 56 Fed. Reg. 66841,66844 (1991)]. The relevant considerations are the physical characteristics of the merchandise, distribution channels, etc. In proceedings to revoke an order in part due to changed circumstances, Commerce considers the lack of interest of the domestic industry to be the key changed circumstance, rather than non-availability of the product. We know of no case where Commerce has ruled that the fact that a product was unavailable domestically was a basis for taking a product outside the scope of an investigation or order.

One important element that current laws and procedures lack, therefore, is a process for directly considering whether a product is available, and whether or not antidumping or countervailing duties should be imposed for this reason.

Second, under current law, products may be removed from the scope of a trade proceeding on a permanent, as opposed to a temporary basis. This has several detrimental effects on U.S. manufacturing. Permanent exclusion of the product from the scope of a proceeding means that petitioners will not be protected in the future from unfair trade practices with respect to that product, even if they start to manufacture it. By contrast, the temporary relief authorized under H.R. 2822 will encourage domestic industry to develop new products, because downstream customers will remain in the U.S. until the U.S. industry begins to manufacture the needed input product. Once the domestic industry begins to manufacture a particular product, the relief afforded by H.R. 2822 would be terminated and the protections of the antidumping duty order fully reinstated. This benefits the producer and the user.

Third, exclusion of a product from an order, once the order is in force, is contingent on petitioners expressing "no interest" in keeping particular products within the scope of the order. This gives petitioners an absolute veto power over

any action, without any obligation or opportunity on the part of the Commerce Department to evaluate the factual basis for any opposition. We believe that petitioners' views should be accorded great weight, but no interested party should have a veto over a Department of Commerce determination. While temporary unavailability may not cause petitioners to have "no interest" in an order, it could cause users to relocate production outside the United States. Commerce should have a chance to consider this issue in appropriate cases.

Fourth, U.S. downstream users are denied standing to participate in any of the current procedures, even though they may be harmed by the inclusion of particular products in antidumping or countervailing duty orders.

Fifth, the current procedures are not sufficiently flexible to allow for timely relief. For example, a "changed circumstances" review may not be conducted less than twenty-four months after the antidumping or countervailing duty order was issued unless "good cause" is shown. By contrast, H.R. 2822 is a very flexible provision which should allow the Commerce Department to provide needed relief on a timely basis.

H.R. 2822 Is A Discretionary Provision That Will Not Impose Significant Burdens

H.R. 2822 is a dramatic departure from the short supply proposal that was considered by the Ways & Means Committee in 1994. The prior proposal was modeled on the strict procedures established in the short supply provision of the U.S. voluntary steel restraint agreements. H.R. 2822, by contrast, is modeled on the much more discretionary European Union's temporary suspension provision added to the EU's antidumping regulation last year.

The EU provision has been in place for approximately one year, and relief has only been provided in one case during that time. This provision has been administered without a significant burden on the resources of the and there is no reason to believe that the Commerce Department's experience would be different. While some have argued that the EU's process in antidumping cases is sufficiently different to make their experience uninstructive in our system, we strongly disagree. Opponents have pointed to no particular reason that justifies this claim. A hallmark of H.R. 2822 is the broad discretion it accords to the administering authority to deny relief in any case it considers inappropriate. This could include any difficult case in which the Department believes that its resources would not be adequate to determine the facts. However, the difficulty of applying this provision in some situations does not mean that the Department should not have the authority to address domestic unavailability in situations where the issues are clear and relief is manifestly warranted.

Moreover, four of the last five former Assistant Secretaries of Commerce for Import Administration (one was actually Deputy Assistant Secretary, before the position was elevated in 1988) wrote in 1994 that a short supply provision was workable and administrable without undue burden. Their views are entirely consistent with our own.

H.R. 2822 Will Not Undermine The Effectiveness Of The Antidumping Or Countervailing Duty Laws

The temporary duty suspension remedy would only apply in situations where products cannot be obtained in the U.S.--situations in which no U.S. producer benefits from the protection of antidumping laws and downstream U.S. producers and their suppliers would be harmed. As such it would neither alter the structure of the law or undermine its effective enforcement.

International trade rules require that antidumping and countervailing duties only be imposed when a domestic industry has been injured by dumping and subsidies. In the absence of injury, there is nothing "illegal" about U.S. customers purchasing goods that the Commerce Department might conclude are sold at below home market prices, or subsidized. Domestic integrated steel producers, who have claimed for years that foreign steel mills engage in dumping and receive subsidies, nevertheless import and use foreign semifinished steel products. These products are clearly subsidized to no less an extent than the finished products that are the subject of petitions. However, because these imports do not cause or threaten injury, they are not actionable, and there is nothing illegal or wrong about importing them.

Similarly, there is no injury caused by products imported because they cannot be obtained domestically. Yet these products can be, and often are, swept up in cases that apply to much broader categories of products. When such a situation occurs, the administering authority should have the ability to address it. Without such an ability, the trade laws can appear arbitrary and wrong-headed. With this flexibility, the operation of these trade proceedings can be smooth, more efficient and more effective in alleviating injury to domestic industries.

The purpose of this bill is simply to prevent harm to U.S. domestic producers when needed input products are not available domestically. There is nothing in H.R. 2822 that would authorize relief based on pricing considerations. This is in contrast to the Short Supply procedures in the Voluntary Restraint Agreements which authorized short supply relief based on a finding that domestic prices were "aberrational". Under H.R. 2822, if the product is actually available domestically, Commerce would turn down the request, regardless of the price at which the product is really available. Commerce would also turn down the request if it determined that granting relief might undercut U.S. prices.

The current failure of U.S. antidumping and countervailing duty laws to consider domestic availability of products subject to these proceedings continues to hamper the competitiveness of numerous U.S. companies. Future cases will expand the number of potentially damaging situations. The proposed legislation gives the Department of Commerce the flexibility and control necessary to address changing market conditions without changing the way the laws work.

Some have argued that a "short supply" procedure is not needed in the antidumping and countervailing duty laws because importers are free to purchase any quantity they wish (so long as the extra duties are paid). This argument fails to account for the fact that antidumping and countervailing duties can effectively bar entry of products into the United States. In such cases, the imposition of duties acts as an embargo (a quota of zero). If the products are available domestically, then the law makes a reasonable choice between the interests of producers and users; if not, the choice to deny access to these products for U.S. manufacturers is clearly unreasonable.

Comments on H.R. 2822

The Temporary Duty Suspension Group appreciates the opportunity to provide these comments. Again, we urge that the Committee approve H.R. 2822 promptly.

American Gas Association
American Wire Producers Association
Amoco Corporation
Apple Computer, Inc.
Berg Steel Pipe Corp.
Canberra Industries, Inc.
Caterpillar, Inc.
Columbia Gas Association Inc.
Compaq Computer Corporation
Computer & Communications Industry Association
El Paso Natural Gas Company
Enron Corporation
Helmerich & Payne IDC
Hewlett Packard
IBM
International Association of Drilling Contractors
Interstate Natural Gas Association of America
Koch Industries, Inc.
Michelin North America
MidCon Corp.
Natural Gas Supply Association
PanEnergy Corporation
Precision Metalforming Association
Pro Trade Group
Sonat Inc.
Steel Service Center Institute
Sun Microsystems
The Williams Companies

TIMKEN

WORLDWIDE LEADER IN BEARINGS AND STEEL

March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Written Comments on Miscellaneous Trade Proposals (TR-17)

The following comments are submitted on behalf of The Timken Company, a United States and multinational producer of tapered roller bearings and specialty steel, with headquarters in Canton, Ohio. They are being submitted in response to the Committee's request for written comments on Miscellaneous Trade Proposals (TR-17). These comments are limited to one proposal, H.R. 2822, which would provide for "temporary duty suspension" authority in cases where antidumping or countervailing duty orders are outstanding and Commerce determines "prevailing market conditions" warrant a suspension. The Timken Company strongly opposes H.R. 2822 as unnecessary and counterproductive.

H.R. 2822 is counterproductive

Let us review the unfair trade problems encountered by Timken in the U.S. market since the late 1960's to demonstrate why the legislation would promote the wrong our trade laws are intended to correct. Beginning in the late 1960's, Timken experienced significant price underselling from Japanese competitors in the U.S. and elsewhere in the world. Timken is the world's largest producer of tapered roller bearings and leader in technology, customer service and quality of product. The first antidumping order on tapered roller bearings from Japan was entered in 1976. Despite the order, dumping by Japanese producers continued and intensified. The problems of continued dumping were exacerbated by a series of problems of administration. For example, the order was narrowly construed by a number of Administrations, not vigorously enforced, with most product from Japan for two major suppliers entering under bond (not cash deposit) until 1990 and not being subject to interest on dumping duties found owed despite no payments being made for fifteen years. Use of related party importers resulted in continued depressed prices in the marketplace as the Japanese appeared willing to continue to dump to buy and hold marketshare. Timken and other domestic producers were forced to close plants, lay off workers, reduce capital expenditures and experience serious harm to the financial performance of the company. A second series of cases were filed in 1986 and resulted in orders being issued in 1987 with margins ranging up to the mid-40% range. When the second set of orders were issued, domestic producers had less capacity, fewer skilled workers, and less financial ability to respond to improved pricing structures. These conditions were the result of dumping and the false market signals dumping causes. If H.R. 2822 had been law in 1987 (or even today), U.S. producers would have been barraged by requests for temporary duty suspension provisions on the theory

that the domestic producers could not supply particular items. To the extent that any of the requests would have been granted, injured producers would never have received the revised market signals to make intelligent decisions on reentry or expansion in particular markets, nor would they have had the improved cash flow to permit reinvestment, reemployment and retraining needed. Stated differently, H.R. 2822 would reward the foreign producers who have been the most effective dumpers. If a dumper can hurt domestic producers sufficiently, the dumper can avoid correcting unfair trade practices. Such an outcome is grossly unfair and contravenes the principle of remedial statutes to promote the remedy and suppress the wrong.

While there have been significant problems with the bearing orders for domestic producers, nonetheless, because there has not been an H.R. 2822, employment has rebounded by 26% (tapered and other bearings) since the orders were issued in the late 1980's.

If Congress wants injured industries to be better able to capture business when conditions of fair trade are supposed to have returned, Congress should assure that relief is available early, is effective, provides incentives to foreign producers to stop dumping (as opposed to encouraging circumvention and evasion) and reduces the hurdles to being able to reinvest, rehire and retrain. To give but one example, because of the serious injury that has been suffered by Timken over the years by continued dumping, duty absorption, circumvention and other problems, the company has not been able to replace as much of its lost capacity as it would have liked to or should have been able to. Continued depressed profitability has prevented the level of reinvestment that otherwise may have occurred. As a result, in the recent demand expansion in 1994-95, Timken was unable to capture some business because depressed pricing continued in the market depriving Timken of the capital or the business justification to add capacity. Timken would ask Congress to correct the problem -- continued dumping -- not exacerbate the problem by creating an additional loophole for dumped merchandise to continue to harm domestic producers.

H.R. 2822 appears to flow from several false premises: (1) the existence of an antidumping or countervailing duty order somehow creates a shortage; (2) purchasers are disadvantaged when they cannot buy dumped merchandise. Both premises are false.

First, unlike a quota or other quantity restraint agreement, neither antidumping nor countervailing duty orders affect availability of product at all. The existence of an order simply provides a carrot and stick to the foreign producer and U.S. importer to charge and pay a fair price. Failure for the foreign producer to charge or the importer to agree to pay a fair price results in the importer paying the difference (fair value - dumped price) to the government as an additional duty. Nothing about an antidumping order changes product availability. Hence, there can never be any product "shortage" as a result of an order.

Second, purchasers are simply required to pay a fair value. They lose a false advantage but cannot be heard to complain that they are disadvantaged. It is irrational to force U.S. producers to compete against an injurious and discriminatory price or against a price that does not permit companies to stay in business. Such pricing causes domestic producers to contract capacity and employment, raise prices on remaining product to attempt to survive and otherwise exit markets regardless of the underlying economic competitiveness of the U.S. producers. Such a result cannot be right.

H.R. 2822 is unnecessary

Just as H.R. 2822 is counterproductive, it is also unnecessary to deal with the types of situations many of its advocates have identified as the underlying justification for the bill.

First, in virtually every case filed with Commerce and the International Trade Commission, modifications to the scope of the investigation occur to exclude product of no interest to domestic producers or deemed not covered by the petition. Moreover, once orders are entered, there is a formal process whereby any interested party can request a clarification of the scope of an investigation to determine whether product is covered. 19 C.F.R. 353.29; 19 C.F.R. 355.29. Thus, there has long been a process whereby parties can clarify coverage and fight out whether particular items are in fact covered. Similarly, where an item is covered by an order and the domestic industry has no interest in producing the item, Commerce will revoke the order in part to reflect the lack of interest. See, e.g., Certain Cut-to-Length Carbon Steel Plate from Canada, 60 Fed. Reg. 61,536 (Dept. Comm. 1995).

To the extent H.R. 2822 attempts to provide an alternative to the existing agency practices and procedures, it is unnecessary. To the extent H.R. 2822 in fact is intended to eliminate fair price conditions on items where domestic producers have expressed interest, the proposal is simply unacceptable. Injured industries need corrected price signals and improved profitability to reenter markets, H.R. 2822 will deny the injured domestic industries the signals and profitability to compete again.

Improvements to Title VII Congress Should Make

There are improvements that Congress should consider which would in fact reduce the perceived problems of downstream purchasers, including.

First, the Congress and the Administration should ensure that relief is available early and is effective. Few threat determinations are made by the Commission. Relief that is delayed results in greater reduction in capacity, capital expenditures, R&D, employment and weakened financial capabilities of companies. The more injured, the longer it will take for companies to be able to recoup their losses and justify reinvestment. Moreover, if relief is given early (as was done in the first tapered roller bearing case against Japan), it must be effective. Failure to collect interest on amounts owed, failure to address duty absorption and duty reimbursement in a realistic manner, the prospective nature of corrections to circumvention -- all of these events frustrate the ability of domestic producers to reinvest as quickly as they would like. This hurts purchasers as well as domestic producers.

Second, Congress should provide a strong incentive to foreign producers to cease dumping. Such an incentive would be the addition of a requirement that any dumping duties found owed would be turned over to the injured domestic industry. If continued dumping, duty reimbursement and duty absorption are understood to have reduced effectiveness because the duties collected will be distributed to injured U.S. producers, foreign producers will have a stronger incentive to reduce or stop dumping. Moreover, U.S. purchasers will be advantaged by having U.S. producers in a better financial position sooner permitting reinvestment in capacity, equipment and people.

Third, Congress should eliminate unintended incentives to importers of dumped goods to circumvent the law. Currently, U.S. administration of orders permits evasion/circumvention to escape the reach of the law until detected and then makes potential liability prospective. In the tapered roller bearing cases, on a number of occasions, entries have been either erroneously liquidated or foreign producers and importers have entered merchandise under tariff items that do not trigger suspension of liquidation procedures at Customs. The result has been that tens of millions of dollars of imports that should have been covered by the orders have escaped liability. Such a result, of course, provides an incentive to importers

to circumvent the law. Such evasion allows the importers to continue to sell at unfair prices and diminishes the ability of the domestic industry to recover promptly from the ravages of unfair trade practices. Congress should require that all instances of circumvention or evasion are subject to duties retroactively to the first imports after the preliminary Commerce determination regardless of whether the imports have been liquidated.

Sincerely,

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March 1, 1996

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Miscellaneous Trade Proposals-H.R. 2822

The Torrington Company, a major domestic manufacturer of antifriction bearings, strongly opposes H.R. 2822, a bill which would provide the Department of Commerce with discretion to suspend temporarily the imposition of antidumping duties. The Torrington Company has been a petitioner and active participant in proceedings involving the antidumping and countervailing duty laws, recently amended by the Uruguay Round Agreements Act. H.R. 2822, which permits the Department of Commerce to carve a loophole in any existing antidumping order in the case of "prevailing market conditions" in the U.S. market, has the potential to eliminate the remedial and beneficial effects of antidumping duty orders.

Torrington is the world's leading producer of needle roller bearings and is the largest full-line producer of antifriction bearings in the United States. Torrington began as a producer of needle bearings, which are used in everything from outboard motors to spacecraft. In the 1980s, Torrington acquired the Fafnir bearing company, which was the leading U.S. producer of ball bearings. The company operates state-of-the art facilities in Connecticut, Illinois, Georgia, North and South Carolina, Tennessee, New York and various countries abroad, producing many types of bearings for a wide range of application.

World-wide, there is overcapacity in the bearing industry. Six companies dominate the production of bearings, each with plants in several countries. These companies include SKF, FAG, INA, NSK, NTN, and Koyo. SKF, FAG, and INA are headquartered in Europe and have plants in Austria, Germany, France, Italy, Sweden, and the U.K., among others. NSK, NTN, and Koyo are headquartered in Japan and have plants in Brazil, Korea, Canada, and Taiwan. In the 1980s, all of these companies were aggressively dumping in the United States market in a battle for increased market share. Torrington and other U.S. producers were caught in the cross-fire between the European and Japanese giants battling for control of the market. As a consequence, many U.S. producers were acquired by these large foreign corporations. And, the remaining producers lost much of their volume business.

The U.S. industry was forced to limit itself to niche products and specialized applications. Without the volume business, U.S. producers could not fund essential R&D to keep pace with the European and Japanese producers. Dumping by those producers thus caused deep, long-term, structural changes in the industry. Unable to sell high-volume bearings at price sufficient to cover costs, the capital costs faced by the

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industry drove up the unit costs on our other products. This not only caused plant closures and lay-offs, but it also caused us to fall behind in the development of new technologies.

In response, Torrington filed antidumping and countervailing duty cases against nine countries. The dumping margins found by Commerce in the original 1988 investigation were in many cases over 100%. During the year following the antidumping and countervailing duty orders, foreign producers had raised their prices and the market price level in the United States by approximately 40%. As a consequence, our company returned to profitability that year and opened a new plant in Rockford, Illinois, in a joint venture with GMN. In the subsequent years, although dumping has never ceased, partial relief from massive dumping has allowed us to reinvest, bring back employees, and take on new research and development projects.

"Temporary" duty suspension defeats the purpose of the law.

On the merits, a "temporary" duty suspension, one which would permit imports otherwise covered by an antidumping or countervailing duty order to escape the imposition of duty whenever a U.S. producer did not offer a competing bid or product, is fundamentally at odds with the purpose of the law. Such a provision rewards the most effective dumpers, those who have reduced or eliminated domestic capacity.

A temporary duty suspension provision would not provide market signals (i.e., what fair value is on particular items) so that U.S. companies would be able to determine whether to reinvest in the market, either by expanding capacity or adding tooling and equipment to produce a new model. If prices below fair value persist, entry by U.S. companies will be discouraged by the lack of an adequate return on investment. This will guarantee that the U.S. does not receive the investment and jobs that would otherwise return to the U.S. following a dumping order and correction of price discrimination.

"Temporary" duty suspension will reduce U.S. investment and cost jobs.

U.S. companies respond to market signals. When prices are depressed and profits nonexistent or inadequate, U.S. companies will often exit the production of particular items or entire product lines. Hence the lack of existing production is most likely an indication that domestic producers have been driven out (or kept from entering a market). If market signals are not permitted to operate, companies will not be able to make sound business decisions to enter or renter a particular product or product area.

The bearings case is a classic example. Between the late 1970's and mid-1980's, the industry closed 30 plants, laid off 13,000 employees, lost $1 billion in capacity. Many well regarded U.S. companies appeared at the USITC to complain about "lack" of domestic product. The delivery and other problems domestic producers were experiencing were largely the result of the serious harm being suffered. Indeed, dumping was so successful that the U.S. industry was decimated.

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Since antidumping relief in 1988, however, the U.S. industry has added roughly $1 billion in new capacity in the United States. This has returned thousands of workers to their jobs. And, many bearings that the U.S. industry had ceased to produce (or nearly so) are now "made in U.S.A." [See U.S. Department of Commerce Bureau of Export Administration, National Security Assessment of the Antifriction Bearings Industry - A Report to the Department of Defense, February 1993.] The improved condition of the industry is traceable to the fact that market prices after the antidumping orders began to reflect more closely "fair value" and companies were able to make business decisions to reinvest. U.S. purchasers would have had many fewer supply options today if they had "no supply" options five years ago.

In the case of Torrington, in particular, the very low prices changed by EU and Japanese competition for particular high-volume part numbers caused us to exit the market for certain bearing part numbers or to reduce dramatically our production of other part numbers. However, at a fair price, including the dumping duty, we have resumed or increased production of many bearings, including high-volume part numbers that we had earlier abandoned to foreign competition. Of course, complete recovery has been stymied to the extent that foreign competitors have adopted a strategy of absorbing the dumping duties. Nevetheless, where prices did increase, the result of the dumping order was to signal U.S. industry to re-enter the market.

This example reflects the fact that the dumping law, in order to work correctly, must not have any "temporary" exceptions for "prevailing market conditions." If imports are excused from an antidumping duty order on the grounds that no domestic producer presently makes that particular product, then the market imperfection caused by dumping will never be eliminated and the market price level will not send the correct signal to potential entrants in the U.S. industry. Nor is there any legitimate basis for importers to cry "foul" simply because they must pay a higher price in order to obtain the merchandise. That higher price is, by definition, a fair value price, equivalent to the price prevailing in the home market of the export country. And, unless the price is raised to fair value, no U.S. producer will be encouraged to enter the market to supply that product. For these reasons, Congress should resist any attempts to amend the statute with respect to a short supply exception.

The duty suspension proposal rests on a false premise.

Contrary to the popular claims, there is never a "no supply" shortage when an antidumping or countervailing duty order is imposed. Nor is there any "unfairness" to purchasers who are in theory asked to pay fair value. In fact, imports are always available. Moreover, in very many cases, foreign producers simply absorb dumping duties and do not pass along those duties to their customers in the form of higher prices. In such cases, purchasers can continue to obtain dumped or subsidized merchandise at prices that ignore the duty.

In this respect, an antidumping or countervailing duty order should be distinguished from a quota or voluntary restraint agreement where bona fide shortages can occur based on demand

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March 1, 1996

fluctuations. In such cases, a temporary suspension provision makes sense.

On the other hand, for products that are not produced by U.S. manufacturers and for which there is no U.S. supplier likely to enter the market, existing law has adequate remedies. First, in such cases it is usual for the petitioner to agree to exclude from the investigation products that are not manufactured domestically. For example, grade X-70 steel plate was excluded from the carbon steel plate investigation in 1993 because of the concerns of the large diameter steel pipe producers and concurrence of domestic producers; so too certain hot-rolled seatbelt retractor spring steel and certain hot-rolled carbon bandsaw steel were excluded from the hot rolled sheet investigation. [Source: Certain Flat-Rolled Carbon Steel Products from Argentina, et al, Inv. Nos. 701-TA-319-332, 334, 336-342, 347-353 (Final) and Inv. Nos. 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), Vol. II at I-3 - I-5, n. 1, Publ. 2664 (August 1993).]

Second, where the imported merchandise is distinguished in physical characteristics and uses from the merchandise subject to the order, scope rulings are available to obtain exemptions from antidumping or countervailing duty orders. Under Commerce Department regulations and the existing statute, foreign producers and importers can petition for review of the scope of an order with respect to their merchandise. Where the order is clear on its face, determinations are made rapidly. In more complicated cases, there are well used provisions for preliminary determinations, briefing and hearings, so that all parties can address the appropriate coverage of an order.

Third, where a purchaser simply cannot locate a domestic source for particular merchandise and where no domestic producer has any intention of entering the market, Commerce may partially revoke an antidumping duty order with respect to the products that are not U.S.-made. This approach has been followed recently in the cases of new steel rail from Canada and certain cut-to-length carbon steel plate from Canada.

Duty suspension encourages persistent dumping.

If foreign producers are exempted from dumping duties whenever a U.S. supplier cannot be found to meet the requirements of an individual customer, those producers will be encouraged to dump effectively -- if you can eliminate or reduce your domestic competition, dumping duties will be "suspended" and the relief will never be effective. This concern is exacerbated in cases where foreign producers or importers absorb dumping duties, rather than pass along their increased costs to their customers. Duty absorption inhibits the market signal--higher prices--that would trigger domestic producer to enter or re-enter the market. If a temporary duty suspension is available, foreign producers are encouraged not only to be effective in eliminating U.S. competition, but to continue dumping post-order so that no U.S. producer increases capacity or investment or resumes production of discontinued products.

Particularly given that antidumping relief is now subject to a "sunset" review provision after only five years, the period during which domestic industries are afforded relief may

TORRINGTON
Part of worldwide Ingersoll-Rand

be too short to permit real recovery and new investment. Too, because every five years the International Trade Commission may (upon request) consider whether revocation of an order would lead to resumed injury, the question of injury by reason of particular imported merchandise will be revisited within a reasonable period.

Administration would increase agency and private party costs.

Domestic industries are already heavily burdened by the costs of participation in AD/CVD cases. Not only is participation in an investigation expensive, but after an order is in place, continued participation requires continued deployment of resources. Already, domestic producers must respond to numerous claims by foreign producers and importers that particular products are outside the "scope" of an order. Such claims can be made at any time, outside the context of administrative review proceedings. Hence, "scope" claims filed on an ad hoc basis create substantial participation costs.

Nor, under present law, is there any compensation for harm already suffered as a result of dumping. The only relief to domestic producers is in the form of duties on future importations. Temporary duty suspension would directly reduce the relief that domestic industries obtain; indeed, products that enter free of potential dumping liability could exacerbate the harm by depressing/suppressing prices on other products made by domestic companies. The absence of any compensation, together with the fact that an antidumping order may not continue beyond its "sunset" review, eliminate the logic of temporary duty suspension.

Finally, there are no disincentives to frivolous claims by users (e.g., coverage of costs for domestics; bar from submitting other requests; etc.) contained in H.R. 2822. During any temporary upturn in U.S. market demand or in any industry in which there do not remain sufficient numbers of producers to supply the entire U.S. market, a temporary duty suspension provision would encourage foreign producers and importers to argue that domestic supply was not available and that duties should be waived.

For all of these reasons, The Torrington Company is strongly opposed to H.R. 2822 or to any other bill that would permit antidumping duties, even "temporarily," to be waived. Where there have been considered findings of unfair trade and of material injury, there is no sound basis to deny relief to domestic producers, to encourage new U.S. investment, and to return U.S. workers to their jobs.

Respectfully submitted,

Robert T. Boyd, Esq.
Vice President, Secretary, and General Counsel

David D. Gridley
Director of Sales and Government Affairs

W.K. MERRIMAN, INC.

7038 River Road
Pittsburgh, Pennsylvania 15225
Phone: (412) 262-7024

February 22, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: H.R. 2822, The Temporary Duty Suspension Act

Dear Mr. Moseley:

Our corporate goal has been to assist our customers optimize productivity and minimize costs by providing quality products and creative technical expertise.

American companies are cutting costs and benefits in order to remain competitive in the world market; and workers' pride and dedication is on an upward climb. All efforts will be negated by "lopsided" international trade.

The United States is not a "dumping ground" to accept the world's excess products. Is America going to be the "International Landfill", or the leader in quality, creativity, and technology? Our representatives must utilize the power we have given them if the United States is to "grow in spirit", and maintain our status in the industrial world market.

Thank you for your time, and we expect your support on this issue.

Sincerely yours,

Mary Ann Merriman
Vice President

MAM/rlh

H.R. 2870

To eliminate the duties on Tetraamino Biphenyl.

March 1, 1996

Hoechst Celanese Corporation
919 - 18th Street, N.W.
Suite 700
Washington, DC 20006
202-296-2890

The Honorable Phil Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
Washington, DC 20515

RE: Comments on H.R. 2870

Dear Representative Crane:

On behalf of the Hoechst Celanese Corporation I am submitting comments in support of H.R. 2870, legislation to retroactively eliminate the duty on Tetraamino biphenyl and make corresponding changes in Schedule XX of the Uruguay Round Agreements Act. These comments are being submitted in response to the Subcommittee's Press Advisory, No. TR-17, dated January 31, 1996. This legislation is necessary to correct a technical error that was made in the final compilation of the U.S. tariff offer, Schedule XX, that was tabled in the Uruguay Round.

One of the longest standing duty suspensions, dating back to the 1980s, was on Tetraamino biphenyl. Tetraamino biphenyl or TAB is imported and consumed solely by the Hoechst Celanese Corporation for the production of fibers. Hoechst is a manufacturer of chemicals, pharmaceuticals, crop protection products, textiles, plastics and film, and employs approximately 20,000 people in the United States.

TAB, also known as 3,3'-Diaminobenzidine, is currently imported into the United States under Harmonized Tariff System subheading 2921.59.40 at a 12.1 percent rate of duty. Under the provisions of the Uruguay Round chemical harmonization scheme, this duty will be reduced in equal increments to 6.5 percent in the year 2004.

Other than Hoechst Celanese, there is no U.S. production of TAB, nor is there any production in this country of a directly competitive product. Legislation to extend the suspension of duties was introduced in the 103rd Congress in the House of Representatives by Rep. John M. Spratt, Jr. (D-South Carolina) and in the Senate by Senator Strom Thurmond (R-South Carolina). There has never been any industry opposition to this suspension.

As a part of the Uruguay Round trade negotiations, the Administration made a commitment to the Congress and the business community to incorporate noncontroversial duty suspensions into its market access offer, as reflected in Schedule XX, with the duties scheduled to be eliminated immediately upon implementation of the Uruguay Round, January 1, 1995.

TAB was on the original Commerce Department "Consolidated Duty Suspension List" of products to be incorporated into the U.S. offer, and was in subsequent offers up until the final document prepared in late March of 1994. There was apparently a misunderstanding regarding whether it was covered in one of the pharmaceutical or intermediate chemical appendices to Schedule XX.

Hoechst Celanese urges the Trade Subcommittee to move H.R. 2870 quickly. We have been working closely with the Administration on this issue. H.R. 2870 has the support of the Executive Branch as indicated in the attached letter from U.S. Trade Representative Michael Kantor to Senator Strom Thurmond.

Therefore, we respectfully request inclusion of such an amendment in any package of technical trade amendments being considered by the Subcommittee on Trade:

- It would correct an understandable error made in the final preparation of the United States market access offer, Schedule XX, that was tabled in Marrakesh in April 1994.
- It would reflect the commitment made by the Administration to Congress and the business community to include all noncontroversial duty suspensions in Schedule XX.
- It would accord to this product the same treatment that was given to every other duty suspension bill introduced prior to March 15, 1994.
- For Hoechst Celanese, the elimination of the duty would enhance its competitiveness allowing for lower prices to consumers of its final products.

I thank you very much for this opportunity to submit our comments and stand ready to assist the Subcommittee and its staff as necessary,

Best Regards,

Sincerely,

W. Anthony Shaw
Manager, Regulatory Affairs

Enclosure

TS/sb

H.R. 2872

To authorize substitution for drawback purposes of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

Alexandria International
713 Shorter Ave
Rome,Ga,30165

February 16, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

We are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Nathan Deal of Georgia and which would amend the duty drawback law found at 19 U.S.C. § 1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

We strongly support enactment of this legislation, for a number of reasons. As you know, the drawback laws were one of the earliest laws enacted by the U.S. Congress. They were enacted to promote U.S. manufacturing for export purposes and to help U.S. businesses grow their markets abroad. In short, the drawback laws were designed to *assist* U.S. industries competing in foreign markets and thus should be liberally construed by the agency responsible for their administration: the U.S. Customs Service. Unfortunately, Customs has taken the opposite approach and administers the drawback laws very restrictively, to the detriment of many U.S. industries—especially the carpet and rug industry. Customs' administration of the drawback laws as applied to this industry does not comport with the intent of the drawback statute.

This restrictive application of the drawback laws has had a detrimental impact on an industry with historically low profit margins. Any increase in the margin realized on sales of exported carpet and rugs confers a distinct competitive advantage on the domestic industry. A few extra pennies of profit per square yard of carpet can make or break a sale. Drawback claims filed under this proposed amendment will result in a monetary benefit to this industry, allowing greater utilization of manufacturing facilities in the U.S. rather than abroad, thereby increasing employment of U.S. workers and utilizing U.S. capital resources. Customs' administration of the drawback laws should have this goal in mind as well. In addition, Customs' criteria to determine whether certain yarns and fibers are of the "same kind and quality" to permit substitution does not recognize the reality of how carpet and rug manufacturing actually occurs and how flexibile modern day manufacturing operations in the carpet industry have become. Customs' current criteria for interchangeability of raw materials upon which drawback is based is extremely limited and fails to acknowledge the industry's ability to produce end products which exhibit the same characteristics and properties regardless of the type of raw material used.

This amendment is necessary to legislate the criteria for determination of "same kind and quality" because Customs will not adopt criteria that reflects what actually occurs in the industry. The standard proposed in this amendment based on harmonized tariff numbers can easily be administered and accurately reflects how substitution occurs in the manufacture of carpet and rugs. (In 1993, Customs itself recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to section 1313(p) of Title 19 for the petroleum industry based on harmonized tariff numbers. This proposed amendment simply extends that concept to section 1313(b)'s definition of "same kind and quality.") Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision. Customs' current criteria noted above are grossly antiquated, administratively unworkable, entirely subjective, and impede the carpet and rug industry's ability to compete in international markets.

In sum, we fully support the enactment of H.R. 2872 and would be pleased to provide further submissions or testify at any scheduled hearings on this issue. Please feel free to contact me at (706)-295-0718 if you have any questions, and we look forward to the swift passage of this important piece of legislation.

Very truly yours,
Mohammad Elkhatib

M. Elkhatib

AMERICAN TEXTILE MANUFACTURERS INSTITUTE
1801 K Street, N.W. Suite 900 Washington, D.C. 20006-1301 TEL 202 862-0500 FAX 202 862-0570

February 28, 1996

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

These comments are submitted by the American Textile Manufacturers Institute (ATMI), the national association of the domestic textile industry on behalf of its member companies in response to the Committee's request for comments regarding H.R. 2872.

ATMI opposes this legislation as unwarranted and unnecessary. The imported carpet yarns for which substitution drawback would be permitted pursuant to the named bill are abundantly available in the United States from a variety of suppliers (many of which are ATMI members). Thus, there is no real need for these yarns to be imported in order to produce carpet either for domestic consumption or for export.

For this reason ATMI requests that this bill not be enacted.

Sincerely,

Carlos Moore

Carlos Moore
Executive Vice President

CRAFTED WITH PRIDE IN USA

Drawback Central, Inc.
Drawback Consultants

DCI

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

We are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Deal of Georgia and which would amend the duty drawback law found at 19 U.S.C. para, 1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

We strongly support enactment of this legislation, for a number of reasons. The drawback laws were enacted to promote U.S. manufacturing for export purposes and to help U.S. manufacturers grow their markets abroad. In short, the drawback laws were designed to assist U.S. industries in competing in foreign markets. As you know , U.S. Customs has the responsibility to adminster such matters.

Unfortunately, Customs has taken the opposite approach and adminsters the drawback laws very restrictively to the detriment of many U.S. industries. In so many instances Customs administration of the drawback laws does not comport with the intent of the drawback statute.Certainly in this situation, Customs is taking a position which is directly opposite to what the drawback law intends.

We support the enactment of H.R, 2872 and would be pleased to provide further submissions relating to this matter.

Thank you,

Fred Palermo
President, DCI

DUPONT LEGAL
Elaine M Olsen
Trade Specialist
DuPont Building - Room 4034
1007 Market Street
Wilmington, DE 19898
(302) 773-5630
(302) 774-7255 facsimile

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

We are writing in support of H.R. 2872, a bill recently introduced by Congressman Nathan Deal of Georgia, which would amend the duty drawback law found at 19 U.S.C. § 1313 to authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

Among the earliest laws enacted by the U.S. Congress, the duty drawback laws were intended to promote U.S. manufacturing exports and to help U.S. industries grow their markets abroad. In short, the drawback laws were designed to *assist* U.S. industries competing in foreign markets, and thus should be liberally construed by the agency responsible for their administration, namely the U.S. Customs Service. Unfortunately, Customs has taken an opposite viewpoint and administers the drawback laws very restrictively, to the detriment of many U.S. industries--especially the carpet and rug industry. Customs' administration of the drawback laws as applied to this industry does not comport with the intention of the drawback statute. As drafted, the proposed amendment would result in a monetary benefit to the U.S.-based carpet and rug industry, by allowing greater utilization of its U.S. manufacturing facilities, and thereby increasing employment of U.S. workers.

We believe the standard proposed in this amendment, which is based on harmonized tariff numbers, can easily be administered by both the industry and the U.S. government. In 1993, Customs itself recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to 19 U.S.C. § 1313(p) for the petroleum industry. H.R. 2872 would simply extend that concept to the definition of "same kind and quality," found in 19 U.S.C. § 1313(b). Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision.

In sum, the DuPont Company fully supports the enactment of H.R. 2872 and, upon request, would be happy to provide you with further information regarding this important piece of legislation.

Very truly yours,

Elaine M. Olsen

EMO:cs

February 21, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

We are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Nathan Deal of Georgia and which would amend the duty drawback law found at 19 U.S.C. § 1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain fibers and yarns for use in the manufacture of carpets and rugs.

We strongly support enactment of this legislation, for a number of reasons. As you know, the drawback laws were one of the earliest laws enacted by the U.S. Congress. They were enacted to promote U.S. manufacturing for export purposes and to help U.S. businesses grow their markets abroad. In short, the drawback laws were designed to *assist* U.S. industries competing in foreign markets and thus should be liberally construed by the agency responsible for their administration: The U.S. Customs Service. Unfortunately, Customs has taken the opposite approach and administers the drawback laws very restrictively, to the detriment of many U.S. industries-- especially the carpet and rug industry. Customs' administration of the drawback laws as applied to this industry does not comport with the intent of the drawback statute.

This restrictive application of the drawback laws has had a detrimental impact on an industry with historically low profit margins. Any increase in the margin realized on sales of exported carpet and rugs confers a distinct competitive advantage on the domestic industry. A few extra pennies of profit per square yard of carpet can make or break a sale. Drawback claims filed under this proposed amendment will result in a monetary benefit to this industry, allowing greater utilization of manufacturing facilities in the U.S. rather than abroad, thereby increasing employment of U.S. workers and utilizing U.S. capital resources. Customs' administration of the drawback laws should have this goal in mind as well. In addition, Customs' criteria to determine whether certain yarns and fibers are of the "same kind and quality" to permit substitution does not recognize the reality of how carpet and rug manufacturing actually occurs and how flexible modern day manufacturing operations in the carpet industry have become. Customs' current criteria for interchangeability of raw materials upon which drawback is based is extremely limited and fails to acknowledge the industry's ability to produce end products which exhibit the same characteristics and properties regardless of the type of raw material used.

This amendment is necessary to legislate the criteria for determination of "same kind and quality" because Customs will not adopt criteria that reflects what actually occurs in the industry. The standard proposed in this amendment based on harmonized tariff numbers can easily be administered and accurately reflects how substitution occurs in the manufacture of carpet and rugs. (In 1993, customs itself recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to section 1313(p) of Title 19 for the petroleum industry based on harmonized tariff numbers. This proposed amendment simply extends that concept to section 1313(b)'s definition of "same kind and quality.") Use of harmonized tariff numbers to determine

tariff numbers. This proposed amendment simply extends that concept to section 1313(b)'s definition of "same kind and quality.") Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision. Customs' current criteria noted above are grossly antiquated, administratively unworkable, entirely subjective, and impede the carpet and rug industry's ability to compete in international markets.

In sum, we fully support the enactment of H.R. 2872 and would be pleased to provide further submissions or testify at any scheduled hearings on this issue. Please feel free to contact me at (706) 629-7721 if you have any questions, and we look forward to the swift passage of this important piece of legislation.

Very truly yours,

MOHAWK INDUSTRIES, INC.

David Kolb

David Kolb
Chief Executive Officer

/ap

NCITD

The National Council on International Trade Development

818 Connecticut Ave., NW Washington, D.C. 20006
Tel.: (202) 331-4328 • Fax : (202) 872-8696

March 1, 1996

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Mansfield and Muse
Washington, DC

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

On behalf of the National Council on International Trade Development, (NCITD)Drawback Committee. We are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Nathan Deal of Georgia and which would amend the duty drawback 19 U.S.C. § 1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

We strongly support enactment of this legislation, for a number of reasons. As you know, the drawback laws were one of the earliest laws enacted by the U.S. Congress. They were enacted to promote U.S. manufacturing for export purposes and to help U.S. businesses grow their markets abroad. In short, the drawback laws are designed to assist U.S. industries competing in foreign markets. This proposed amendment will result in a monetary benefit to the U.S.-based carpet and rug industry. It will allow greater utilization of manufacturing facilities in the U.S. rather than abroad, increase employment of U.S. workers, utilize U.S. capital resources and further promote trade.

We believe the standard proposed in this amendment based on harmonized tariff numbers can easily be administered by both the industry and the U.S. government. In 1993, Customs itself recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to section 1313(p) of the Title 19 for the petroleum industry based on harmonized tariff numbers. This proposed amendment simply *extends* that concept to section 1313(b)'s definition of "same kind and quality." Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision.

We fully support the enactment of H.R. 2872 and would be pleased to provide further submissions or testify at any scheduled hearing on this issue. Please feel free to contact me if you have any questions, and we look forward to the swift passage of this important piece of legislation.

Very truly yours,

Sandra Hale-Sisto

Sandra Hale-Sisto, NCITD

National Customs Brokers & Forwarders Association of America, Inc.
One World Trade Center, Suite 1153/New York, NY 10048/(212) 432-0050/FAX (212) 432-5709

Michael F. Dugan
President

John Hammon, CAE
Executive Vice President

February 29, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee of Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

On behalf of the National Customs Brokers and Forwarders Association of America, we are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Nathan Deal of Georgia and which would amend the duty drawback law found at 19 U.S.C. 1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets and rugs.

Our support is based on the same reasoning that forms the foundation of the original and current duty drawback laws. Drawback laws were among the earliest laws enacted by the U.S. Congress; the first dates back to 1789. Their purpose then and now is to promote exports and to help U.S. business grow through the expansion of foreign markets. At a time of trade deficits and unfavorable trade imbalances, laws designed to assist U.S. industry compete in foreign markets should be liberally construed so as to expand their scope and not restrict it.

The proposed amendment will result in a monetary benefit to the U.S.-based carpet and rug industry, by allowing greater utilization of the manufacturing facilities in the U.S. instead of abroad, and thus expand the employment of U.S. workers and increase the use of U.S. capital. It is our position that the standard proposed in this amendment based on harmonized tariff numbers, will result in efficiencies and cost savings for both the industry and the U.S. government.

In 1993, Customs recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to section 1313(p) of Title 19 for the petroleum industry, based on harmonized tariff numbers. This proposed amendment simply extends that concept to section 1313(b)'s definition of "same kind and quality." Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision. Therefore, we firmly support the enactment of H.R. 2872 and would be pleased to provide further information as necessary. Please feel free to contact me. We look forward to the swift passage of the important piece of legislation.

Very truly yours,

Michael F. Dugan

Michael F. Dugan
President, NCBFAA

QUEEN CARPET

February 16, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

We are writing in support of H.R. 2872, a bill which was recently introduced by Congressman Nathan Deal of Georgia and which would amend the duty drawback law found at 19 U.S.C. §1313. The proposed legislation would authorize substitution for manufacturing drawback claims of certain types of fibers and yarns for use in the manufacture of carpets & rugs.

We strongly support enactment of this legislation, for a number of reasons. As you know, the drawback laws were one of the earliest laws enacted by the U.S. Congress. They were enacted to promote U.S. manufacturing for export purposes and to help U.S. businesses grow their markets abroad. In short, the drawback laws were designed to assist U. S. industries competing in foreign markets and thus should be liberally construed by the agency responsible for their administration: the U. S. Customs Service. Unfortunately, Customs has taken the opposite approach and administers the drawback laws very restrictively, to the detriment of many U.S. industries--especially the carpet and rug industry. Customs' administration of the drawback laws as applied to this industry does not comport with the intent of the drawback statute.

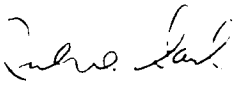
This restrictive application of the drawback laws has had a detrimental impact on an industry with historically low profit margins. Any increase in the margin realized on sales of exported carpet and rugs confers a distinct competitive advantage on the domestic industry. A few extra pennies of profit per square yard of carpet can make or break a sale. Drawback claims filed under this proposed amendment will result in a monetary benefit to this industry, allowing greater utilization of manufacturing facilities in the U.S. rather than abroad, thereby increasing employment of U.S. workers and utilizing U.S. capital resources. Customs' administration of the drawback laws should have this goal in mind as well. In addition, Customs' criteria to determine whether certain yarns and fibers are of the "same kind and quality" to permit substitution does not recognize the reality of how carpet and rug manufacturing actually occurs and how flexible modern day manufacturing operations in the carpet industry have become. Customs' current criteria for interchangeability of raw materials upon which drawback is based is extremely limited and fails to

acknowledge the industry's ability to produce end products which exhibit the same characteristics and properties regardless of the type of raw material used.

This amendment is necessary to legislate the criteria for determination of "same kind and quality" because Customs will not adopt criteria that reflects what actually occurs in the industry. The standard proposed in this amendment based on harmonized tariff numbers can easily be administered and accurately reflects how substitution occurs in the manufacture of carpet and rugs (In 1993, Customs itself recognized the usefulness of harmonized tariff numbers in the administration of the drawback laws by supporting an amendment to section 1313(p) of Title 19 for the petroleum industry based on harmonized tariff numbers. This proposed amendment simply extends that concept to section 1313(b)'s definition of "same kind and quality.") Use of harmonized tariff numbers to determine whether certain fibers and yarns are of the "same kind and quality" provides a transparent and rational method for making this important decision. Customs' current criteria noted above are grossly antiquated, administratively unworkable, entirely subjective, and impede the carpet and rug industry's ability to compete in international markets.

In sum, we fully support the enactment of H.R. 2872 and would be pleased to provide further submissions or testify at any scheduled hearings on this issue. Please feel free to contact me or Michael White of Queen Carpet at 706-277-1900 if you have any questions, and we look forward to the swift passage of this important piece of legislation.

Very truly yours,
QUEEN CARPET



Julian D. Saul
President

JDS.pg

cc: Representative Nathan Deal

H.R. 2889

To eliminate the duties on 2-Amino-3 chlorobenzoic acid, methyl ester.

March 1, 1996

Hoechst Celanese Corporation
919 - 18th Street, N.W.
Suite 700
Washington, DC 20006
202-296-2890

The Honorable Phil Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
Washington, D.C. 20515

RE: H.R. 2889 – Request for Written Comments on Miscellaneous Trade Proposals, January 31, 1996

Dear Representative Crane:

On behalf of the Hoechst Celanese Corporation I am submitting comments in support of H.R. 2889, legislation to eliminate the import duties on 2-Amino-3-chlorobenzoic acid, methyl ester, introduced by Representative Sue Myrick (R-NC). These comments are being submitted in response to the Subcommittee's Press Advisory, No. TR-17, dated January 31, 1996.

The product covered by H.R. 2889 is currently imported under subheading 2922.49.30 of the Harmonized Tariff Schedule of the U.S. at a duty rate of 12.1 percent ad valorem. As a result of the Uruguay Round Agreement, the duty will eventually be phased down to 6.5 percent ad valorem in 2004.

2-Amino-3-chlorobenzoic acid, methyl ester, represents an important development in herbicides. Because it can be used with a very low rate of application, it is highly recommended for its environmental advantages over traditional herbicides used for crop protection. It is targeted to replace high application rate herbicides in the soybean market in the southern U.S. Because of its environmental advantages, it is on an accelerated approval path.

2-amino-3-chlorobenzoic acid, methyl ester is imported by the Specialty Chemicals Group of Hoechst Celanese Corporation located in Charlotte, North Carolina. Hoechst is a manufacturer of chemicals, pharmaceuticals, crop protection products, textiles, plastics and film, and employs approximately 20,000 people in the United States.

There is no U.S. production of 2-amino-3-chlorobenzoic acid, methyl ester, and initial imports over the next three years will be at levels where the revenue loss will be de minimus.Elimination of the duty is essential to allowing the product to be competitive and to permit U.S. farmers to participate in an environmentally friendly low application rate herbicide program.

We thank you very much for the opportunity to comment on the pending legislation and urge the Ways and Means Committee to act during this Congress on this and other technical trade proposals before the Committee.

Best Regards,

Sincerely,

W. Anthony Shaw
Manager, Regulatory Affairs

TS/sb

H.R. 2890

Relating to the tariff treatment of certain footwear.

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WRITTEN SUBMISSION
OF
KAUFMAN FOOTWEAR CORPORATION
ON H.R. 2890

This submission is made on behalf of Kaufman Footwear Corporation (the "Company") in support of H.R. 2890. H.R. 2890 would reduce the duty rate applicable to certain footwear imported during the period January 1, 1989 through June 30, 1991. The footwear eligible for this treatment is that described in subheading 9905.64.10 of the Harmonized Tariff Schedule of the United States ("HTS").

The Company operates a footwear manufacturing facility in Batavia, New York. The Company is affiliated with Kaufman Footwear, a division of William H. Kaufman, Inc., based in Ontario, Canada. The Company's Batavia facility manufactures high quality, cold weather footwear sold under the "SOREL" trademark. The Batavia facility employs 250 production workers, the majority of whom are engaged in producing footwear manufactured with the bottoms described below. The most typical example of the footwear manufactured by the Company at Batavia is a mid-calf boot with a rubber bottom which covers the lower part of the foot and a leather or textile shaft. This is pac footwear, that is, it is designed to be used with a boot liner. The shafts are made at the Batavia facility. The bottoms are imported from Canada. The bottoms would be eligible for the treatment provided by H.R. 2890.

The bottoms are classified by the United States Customs Service in HTS subheading 6401.99.60 which describes waterproof footwear with uppers and outer soles of rubber or plastics. The bottoms are classified here, even though they are not complete footwear, by virtue of General Rule of Interpretation 2(a), HTS, which requires that a part be classified in the provision for the complete article when the part has the essential character of the complete article. This classification was an unanticipated departure from that which had obtained under the Tariff Schedules of the United States ("TSUS") which were in force from 1962 through 1988.

Under the TSUS the bottoms were classified as footwear parts because the Company established that the materials and labor necessary to produce the bottoms in Canada represented less than one-half of the cost of the manufacture of the complete footwear and substantially less than one-half of the manufacturing time and effort. The general rule under the TSUS was that when cost, time and effort required to produce the imported part was less than that necessary to convert the imported part into the complete article, the imported part was not classified in the provision for the complete article. Thus, at the time the United States and Canada negotiated the United States-Canada Free Trade Agreement ("FTA"), the bottoms imported by the Company were classified by the United States Customs Service as footwear parts with a duty rate of 5.3%.

At the same time these negotiations were taking place, the United States was preparing to adopt the HTS, a system of tariff classification based on an international convention. The HTS, like the TSUS, provides that, under specified circumstances, parts are classified in the provision for the complete article. Although the

provisions are not identical, they are similar in concept and language, and the description of the HTS provision by the International Trade Commission in its Submitting Report to the Congress so stated. Given the similarity of purpose and language and the statement of the International Trade Commission, the Company was very surprised when the Customs Service decided in the Spring of 1989, after the FTA has been completed, that its bottoms were classified as footwear under the HTS. This decision resulted in a duty increase to 33.7% (footwear) from 4.7% (parts), at the 1989 rates for products eligible for reduced-duty treatment under the FTA.

In an effort to restore the status quo ante, the Company sought a reduction to the rate applicable to parts under the accelerated duty elimination provisions of the FTA. The request was accepted by the Office of the United States Trade Representative ("USTR") but eventually was denied because of the objection of the Rubber and Plastics Footwear Manufacturers Association ("RPFMA").

The Company renewed its FTA request in 1990. The 1990 request was different in two respects; 1) it sought a reduction retroactive to January 1, 1989; and 2) it had the support of RPFMA. RPFMA's support was part of an agreement between footwear producers in the United States and Canada. Under the agreement the Company would abandon its efforts to convince the Customs Service that its bottoms were classified properly as parts. This would leave in place the classification of the bottoms as footwear. Producers in Canada would support the elimination of duty on certain athletic footwear with leather uppers which were of interest to RPFMA members. RPFMA would support the Company's request for a retroactive reduction in duty on the bottoms.

Unfortunately, USTR was unwilling to grant a retroactive reduction. The Company was forced to abandon this aspect of its request, but was allowed to amend its request to seek the elimination of all duty effective July 1, 1991. The balance of the arrangement between footwear producers in Canada and the United States was implemented.

H.R. 2890 is designed to remedy the result of an unnecessarily narrow reading of the FTA. The Company attempted to restore the status quo ante on a retroactive basis. This attempt was supported by RPFMA. This support was based on the understanding that as long as industry in the United States and Canada supported a request for accelerate reduction in duty, neither the Government of the United States nor that of Canada would object. Three of the four parties agreed; only the United States demurred.

A principal purpose of the FTA is to eliminate tariffs as a consideration in determining where to locate production facilities as between the United States and Canada. The Company has maintained the Batavia facility in part because of this promise. This has been an expensive decision since the Company could have reduced its tariff costs by importing complete footwear incorporating the bottoms rather than importing the bottoms as parts.

H.R. 2890 will do no more than implement the FTA.

For the reasons expressed above, the Company requests that the Subcommittee on Trade favorably report H.R. 2890.

H.R. 2895

To amend the Harmonized Tariff Schedule of the United States with respect to fireworks.

THE AMERICAN PYROTECHNICS ASSOCIATION COMMENTS REGARDING H.R. 2895 CORRECTIONS TO DISPLAY FIREWORKS HTSUS CLASSIFICATION

These comments are filed, on behalf of the American Pyrotechnics Association ("APA"), pursuant to the House Ways and Means' Trade Subcommittee January 31, 1996 request for comments on certain miscellaneous trade proposals. The APA, the national trade association of fireworks producers and importers, represents approximately 90 percent of U.S. fireworks sales and 90 percent of U.S. production. Attached is a list of APA Display Fireworks members. These companies strongly support this legislation.

The APA actively supports H.R. 2895, which creates a separate category for display fireworks, and returns the duty rate for those fireworks to a rate that is equivalent to the pre-Uruguay Round rate. This legislation, a return to the status quo prior to the Uruguay Round Agreements Act ("URAA"), is supported by both importer and domestic producer members of the APA.

The URAA, signed by President Clinton on December 8, 1994, contains new ad valorem tariff rates for certain articles which previously had per kilogram tariff rates. Although the intent of converting per weight duties to ad valorem duties was to harmonize the tariff system and reduce tariff rates, this conversion has greatly increased the tariff on **display fireworks**, effectively doubling the tariff paid on these articles. Such an outcome was not intended by the Uruguay Round negotiators nor by Congress.

Display fireworks, formerly known as Class B special fireworks, are larger fireworks intended for public displays, such as state and local civic celebrations. They generally function by rapid combustion or deflagration as opposed to detonation. Display fireworks are classified as 1.3G explosives by the Department of Transportation.

Display fireworks can be distinguished from consumer fireworks, which contain limited amounts of pyrotechnic and explosive compositions and are intended for use by the general public. Consumer fireworks typically include small roman candles, sky rockets, cylindrical and cone type fountains, and firecrackers. Consumer fireworks, formerly known as Class C common fireworks, are classified as 1.4G explosives by the Department of Transportation.

BACKGROUND AND THE NATURE OF THE PROBLEM

Prior to the completion of the GATT Uruguay Round, fireworks imported into the United States were assessed an import duty of 11¢ per kilogram under HTS subheading 3604.10. During the Uruguay Round negotiations, an effort was made to convert all chemicals between Chapters 28 and 38 to ad valorem duties. As a result of this, the duty on fireworks was converted from 11¢ per kilogram to a 5.3% ad valorem duty. Along with this conversion, which went into effect in January 1995, a ten digit statistical breakout was added to distinguish consumer fireworks from display fireworks. These 10 digit statistical breakouts have provided a clear picture of the effect that the URAA conversion to ad valorem rates has had on display fireworks.

Display fireworks comprise only 9 percent of imports by weight, but 20 percent by value, and have an average unit value that is nearly two and a half times as large as consumer fireworks. Because display fireworks represent a much higher value product,

but are only a small portion of fireworks imports by volume, the conversion from a per kilogram duty to a value based ad valorem duty has severely impacted importers and purchasers of display fireworks.

Based on 1995 half-year figures, the effective duty rate for display fireworks has increased by over 80 percent from 11¢ to 20¢ per kilogram, while the effective duty rate for consumer fireworks has declined from 11¢ to 7¢ per kilogram. The reduction in duty rate for consumer fireworks was expected and is consistent with the goals of the Uruguay Round. However, the steep increase in duty for display fireworks was neither anticipated, nor the intention of any party to the negotiations or to the drafting of the URAA.

A SEPARATE HTS CLASSIFICATION FOR DISPLAY FIREWORKS

The increase in duty for display fireworks occurred because one underlying assumption in converting from a per kilogram to an ad valorem based duty was that articles within a specific HTS category are relatively uniform in weight and value. However, this is not the case with HTS subheading 3604.10. This subheading is a basket category containing both low-priced consumer fireworks and much higher valued display fireworks. Because higher valued display fireworks only account for a small percentage of the volume of imports in this HTS category, any conversion based on volume or average unit value of the category as a whole is skewed toward the far greater volume of consumer fireworks.

H.R. 2895 provides a solution for this problem. H.R. 2895 creates a separate HTS classification for display fireworks, with a duty rate established at a level equivalent to the pre-URAA rate. Using 1989 as a base year, as was done when the broader category was converted, the ad valorem rate for display fireworks should be **2.4%** rather than the 5.3% assessed for all fireworks. Based on 1995 half-year import statistics, the annualized cost of the current classification to display fireworks importers and purchasers is approximately $500,000 higher than if there was a separate classification for display fireworks with the proper ad valorem rate.

A new classification and return of the duty rate to the status quo prior to the URAA will rectify this situation and have minimal impact on the federal government, as the net revenue effect will be under $500,000.

DUTY SAVINGS WILL BENEFIT STATE AND LOCAL GOVERNMENTS

Approximately 70 percent of all sales of display fireworks are to state and local governments for use in civic displays such as Fourth of July and Memorial Day celebrations. The increased duty on these display fireworks has forced these governments to pay higher prices for fireworks programs at a time when most governments are already having financial difficulties. A major benefit of H.R. 2895 is that state and local governments will not have to incur the added expense of these unanticipated and unwarranted increases.

AMERICAN PYROTECHNICS ASSOCIATION
DISPLAY COMPANY MEMBERS
SUPPORTING H.R. 2895

Add Fire, Inc., Valparaiso, IN

Alonzo Fireworks Display, Inc., Mechanicsville, NY

Alpha-Lee Enterprises, Inc., Friendswood, TX

American Eagle Fireworks, Inc., Lansing, MI

American Fireworks Co., Hudson, OH

Amusement Brokers, Ltd., Beloit, WI

Arkansas Pyrotechnic Productions, N. Little Rock, AR

Arrowhead Fireworks Co., Inc., Duluth, MN

Atlas Advanced Pyrotechnics, Inc., Jaffrey, NH

Atlas Enterprises, Inc., Fort Worth, TX

Bartolotta's Fireworks Company, Inc., Genesee Depot, WI

Classic Fireworks By Event, Inc., Mandeville, LA

Coonie's Explosives and Black Powder, Inc., Hobbs, NM

Davey Fire, Inc., Sacramento, CA

De La Mare Engineering, Inc., San Fernando, CA

Fiesta Texas/Opryland USA, San Antonio, TX

Fireworks By Grucci, Inc., Brookhaven, NY

Fireworks Over America, Springfield, MO

Fireworks Productions, Inc., Northeast, MD

Fireworks Productions International, Inc., Scottsdale, AZ

Fireworks Spectacular, Inc., Pittsburg, KS

Fireworks West International, Logan, UT

Flash! Fireworks & Flash Advertising, Derby, KS

Forkston Fireworks MFG., Inc., Mehoopany, PA

Garden State Fireworks, Millington, NJ

Hamburg Fireworks Display, Inc., Lancaster, OH

Ideal Display Company, Moscow, PA

International Fireworks MFG., Co., Douglassville, PA

J&M Displays, Inc., Yarmouth, IA

Kellner's Fireworks, Inc., Harrisville, PA

Keystone Fireworks and Specialty Sales Co., Dunbar, PA

Lake Country Fireworks, Farmington, NY

Lantis Fireworks, Inc., Sioux City, IA

Lantis Productions, Inc., Draper, UT

Luna Tech, Inc., Owens Cross Roads, AL

McCall Fireworks, Inc., McAlester, OK

Melrose Pyrotechnics, Inc., Kingsbury, IN

MPA, Inc., Ione, CA

Night Magic, Inc., New Carlisle, IN

Northstar Fireworks Displays, Montpelier, VT

Nostalgia Pyrotechnics, Inc., Osco, IL

Performance Pyrotechnic Associates, Inc., Dittmer, MO

Precocious Pyrotechnics, Belgrade, MN

Pyro Products, Inc., Dittmer, MO

Pyro Shows, Inc., LaFollette, TN

Pyro Spectaculars, Inc., Rialto, CA

Pyrodyne American Corporation, Tacome, WA

Pyrotechnico, New Castle, PA

Rich Brothers Co., Sioux Falls, SD

Rockingham Fireworks Display, Seabrook, NH

Rozzi, Inc., Loveland, OH

Sooner Funds Limited, New Castle, OK

Spielbauer Fireworks Co., Inc., Green Bay, WI

Starr Display Fireworks, Inc., Walcott, ND

Stonebraker-Rocky Mountain Fireworks, Denver, CO

Sunny International Co., Inc., Rockville, MD

Sunset Fireworks Ltd., Dittmer, MO

Thunder Fireworks, Tacoma, WA

Wald and Company, Inc., Greenwood, MO

Walt Disney World, Lake Buena Vista, FL

Western Display Fireworks, Ltd., Canby, OR

Western Enterprises, Inc., Carrier, OK

Wolverine Fireworks Display Co., Inc., Bay City, MI

Young Explosives Corporation - Display Fireworks, Rochester, NY

Zambelli Fireworks MFG Co., Inc., New Castle, PA

Zambelli Internationale, Boca Raton, FL

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Donald J. Borut

March 1, 1996

The Honorable Philip M. Crane
U.S. House of Representatives
Chairman, House Subcommittee on Trade
Washington, D.C. 20515

Dear Chairman Crane:

On behalf of more than 135,000 municipal elected officials, I am writing in support of H.R. 2895, a bill to modify the tariff classification of display fireworks. These comments are filed pursuant to the House Ways and Means Trade Subcommittee's January 31, 1996, request for comments on miscellaneous trade proposals.

Municipal governments provide firework displays for their communities. On holidays such as the Fourth of July, citizens expect their local governments to provide these displays. With the inadvertent increase in the tariff of display fireworks, the cost for municipalities of providing fireworks has also increased. In times of tighter budget constraints, municipal governments cannot afford to absorb elevated costs, but, at the same time, do not want to lessen civic pride by eliminating this service for their citizens. Therefore, NLC supports rectifying the increased tariff with the new classification for display fireworks.

Sincerely,

Gregory S. Lashutka
President
Mayor, Columbus, Ohio

United States Enrichment Corporation Privatization Act

see also Ad Hoc Committee of Domestic Nitrogen Producers under H.R. 2822
see also AK Steel Corporation under H.R. 2822
see also American Iron and Steel Institute H.R. 2822

JOBS
GROWTH
WORKER RIGHTS
CLEAN EARTH

AFL-CIO Task Force on Trade

March 1, 1996

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D. C. 20515

Dear Mr. Moseley:

I am writing to associate the AFL-CIO with the views of the Oil, Chemical and Atomic Workers International Union concerning the legislative proposal to waive the applicability of Title VII of the Tariff Act of 1930 on the importation of certain uranium from the Russian Federation.

The AFL-CIO believes that such a waiver of anti-dumping laws is neither necessary nor warranted, and would set a dangerous precedent concerning the integrity and application of unfair trade practice statutes. At a time when U.S. workers are under extreme pressure from unfair and inequitable international trade, such a step would be particularly unwise.

While we understand the importance of the agreement with the Russian Federation on highly enriched uranium (HEU), there are alternative ways of maintaining this kind of program without legislating authority for the President to waive U.S. trade laws. Indeed, such a step would almost guarantee that other, more balanced approaches would not be pursued.

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As experience is gained with the HEU Agreement, it might be necessary to reconsider the terms of that agreement to insure that U.S. domestic production is not unduly harmed. A waiver would have the practical effect of locking in the current terms of that agreement, regardless of changed circumstances. In that event, it is likely that at least one of the U.S. gaseous diffusion plants would face closure, resulting in the dismissal of over 5,000 workers.

Clearly, such an outcome is unacceptable, and the AFL-CIO strongly urges the Committee to reject the waiver proposal.

Sincerely,

Mark A. Anderson, Director
Task Force on Trade

MAA/kc
opeiu 2, afl-cio

BRUSH WELLMAN
ENGINEERED MATERIALS

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Hugh D. Hanes
Vice President, Government Affairs

February 28, 1996

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Comments on Miscellaneous Trade Proposals (TR-17)

The House Ways and Means Committee's Subcommittee on Trade has requested written comments on various trade proposals identified in its January 31, 1996 advisory (TR-17). Brush Wellman, Inc. of Cleveland, Ohio is the sole U.S. producer of beryllium metal and is a major manufacturer of beryllium and beryllium alloys for both military and commercial applications. These written comments examine only one of the miscellaneous provisions, that which would permit the President to waive the applicability of Title VII of the Tariff Act of 1930 to the imposition of certain uranium from the Russian Federation.

While Brush Wellman does not presently have any outstanding antidumping orders or pending cases, the company is concerned about the precedent that would be established should the national security waiver authority from dumping scrutiny on imported uranium be added to law.

Being a major supplier of strategic and critical materials to the military, Brush Wellman is sensitive to the needs of the U.S. government to implement the government-to-government agreement between the United States and the Russian Federation providing for the purchase of uranium extracted from former Soviet nuclear weapons. The company agrees that taking the enriched uranium out of circulation is an important national objective. However, it is of concern that removal of this material appears to be at the cost of the possible survival of domestic suppliers of enriched uranium. Nothing in the proposed legislation suggests that the interest of domestic producers or their workers are being protected, that the imported material will do other than replace domestically produced product or that other steps to minimize the harm to domestic producers and their workers are being pursued. By its terms, the proposed bill would prevent domestic producers from safeguarding their survivability by seeking fair trade conditions. Yet, clearly U.S. uranium producers are critical to overall national security both in the short and longer-term.

Because Brush Wellman and dozens or even hundreds of other defense contractors or suppliers of critical national defense raw materials could in the future be similarly situated to the position of U.S. uranium producers, it is critical that Congress examine carefully the Administration proposal to assure (1) fair market conditions for competing domestic producers are mandated and enforced by any amendment enacted and (2) any bill enacted into law is limited to the extraordinary facts involved in uranium, including the preexisting U.S. government purchase agreement.

Very truly yours,

Hugh D. Hanes

Hugh D. Hanes

CP&L

Carolina Power & Light Company
PO Box 1551
411 Fayetteville Street Mall
Raleigh NC 27602

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

Carolina Power & Light Company (CP&L) is an investor owned nuclear electric utility serving customers in North and South Carolina.

The purpose of this letter is to advise you of CP&L's position on the Administration's requested legislation to provide the President with the authority to waive the applicability of Title VII of the Tariff Act of 1930 for the importation of certain uranium from the Russian Federation.

CP&L believes that for purposes of supporting the United States' non-proliferation policy and for national security reasons the President should be granted the authority to waive Title VII of the Tariff Action of 1930. This waiver should apply only to the purchase of highly enriched uranium (and the low enriched uranium derived from such highly enriched uranium) from the Russian Federation under the U.S.-Russian Federation Agreement. Under the "Swords of Plowshares" agreement between the United States and Russia, highly enriched uranium that is extracted from Russian nuclear weapons will be blended down to a form useable in the production of electricity in United States nuclear power plants.

To facilitate the commercial transactions that contribute to this essential element to the government to government agreement, it is vital that certain legislative measures be put into place to add stability and security of supply to sales of the blended material to the electric power industry. CP&L believes that the proposed Administration waiver offers the needed stability in the event that the Agreement Suspending the Anti-Dumping Investigation .....(the Suspension Agreement) is terminated.

However, CP&L is opposed to the addition of language on the proposed waiver titled "preservation of terms of Suspension Agreement in the event waiver is exercised" that would serve to legislate the terms of the Suspension Agreement. This language is unnecessary and contradictory to the need for the waiver (ie, the waiver would only be needed if the Suspension Agreement had already been terminated).

CP&L applauds the efforts of the United States government to promote the conversion of weapons grade material to fuel for the production of electric power. We believe the Administration's proposed waiver of Title VII of the Tariff Act of 1930 is an important step in this process. However, there is no justification for this waiver to involve other changes to uranium trade.

Yours very truly,

D. C. Poteralski, Manager
Nuclear Fuels Management &
Safety Analysis

WRITTEN COMMENTS OF REPRESENTATIVE FRANK CREMEANS
REGARDING A WAIVER OF TITLE VII OF THE TARIFF ACT OF 1930 FOR THE
IMPORTATION OF RUSSIAN URANIUM

February 28, 1996

Representative Frank Cremeans
1630 Longworth House Office Building
Washington, DC 20515
(202) 225-5705

Rep. Cremeans opposes the waiver of Title VII of the Tariff Act of 1930 for the importation of Russian uranium. This opposition is based on his concern of possible job loss at the Piketon Atomic Plant in Piketon, Ohio should the waiver be granted.

As we look back today to the Cold War era of the 1950's, it is easy for many of us to remember the major players and events that made up the early part of that time -- President Eisenhower, Secretary of State Dulles, and the Korean War to mention a few. However, those in the spotlight weren't the only ones to contribute to America's Cold War successes. Many others deserve to be remembered for the sacrifices they made in protecting our freedoms. Among them are the men and women of the Piketon Atomic Plant.

In the 1950's, the Piketon Atomic Plant in South Central Ohio produced the uranium that loaded the nuclear weapons used to defend our borders. In fact, it was the only facility in America which could produce the necessary uranium for our defense and the men and women who worked there played a role in protecting this country that few will ever fully know. These people put their health and safety on the line at a time when little was known about the effects of uranium. With their help, America won the Cold War without firing a shot. I am extremely proud of their dedication to this country and the role they played in defeating communism.

Over the years, the Piketon Plant has adapted to its reduced role in our defense industry, shifting its production emphasis to utility fuel. Unfortunately, the end of the Cold War has not put an end to all challenges for the workers at Piketon. Today, these same men and women face a different challenge. Not from armed aggressors as in decades past, but from within our own borders. Today, the threat comes in the form of a trade waiver request by President Clinton.

The President has asked Congress to waive the applicability of Title VII of the Tariff Act of 1930 when the President determines that a national security interest is at stake. On behalf of the men and women at the Piketon Atomic Plant, I wholeheartedly urge the Ways and Means Subcommittee on Trade to deny the President's request for such a waiver.

I, like many of my colleagues, believe that America must do all it can to rid Russia of enriched uranium. By collecting the nuclear materials ourselves, we can help avert the risk of nuclear proliferation. These are worthy goals on which nearly the entire Congress would probably agree.

However, a waiver of trade authority in this case is not necessary. As Senator Domenici wrote in a letter to Vice President Gore dated October 27, 1995, "I believe such a waiver is unnecessary and unwise.....it is my strong contention that forward sales conducted in accordance with the legislated schedule do not threaten injury, are consistent with the national interest advanced in both the Suspension Agreement and the U.S.-HEU Agreement, and form the third leg of a stable uranium market." Not only are mechanisms currently in place to provide for a smooth transition of Russian uranium to the American market, but the current agreements have helped stabilize the uranium market here at home.

To begin with, a trade waiver could have disastrous consequences for the workers at the Piketon facility. It would allow the Russian Government to sell its uranium at below-cost market-prices in America. If the uranium is dumped on the American market, it would most likely lead to the loss of over 2000 jobs at Piketon. So in a sense, this waiver protects Russian jobs while placing ours at risk. This is hardly the thanks I imagined the people of Southern Ohio would receive for winning the Cold War.

Instead of granting a waiver, I urge the President to find a constructive way to meet our national security needs without placing American jobs at risk. We can meet both of these obligations by feeding the uranium into the market at a rate that does not endanger American jobs. A waiver of Title VII is not the answer. Again, I urge the Subcommittee to deny this waiver request and to look for a solution which solves national security needs without sacrificing American jobs.

ELMER CHATAK
PRESIDENT

PETER S. diCICCO
SECRETARY-TREASURER

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PRESIDENT

[redacted]

March 1, 1996

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

The Industrial Union Department, AFL-CIO, is writing to you in support of the arguments put forth by the Oil, Chemical and Atomic Workers (OCAW) in their recent letter regarding the Waiver of Dumping Law on the Russian Highly Enriched Uranium Agreement.

While it is true that it should be the goal of our government to reduce the stockpiles of nuclear weapons developed by the Russians during the Cold War, it is also only fair that this nation does not follow a trade policy in relation to these materials which would force a shutdown of capacity in this country, thus creating job losses for thousands of American workers.

While the Cold War is over, the world is still a dangerous and uncertain place. The pending general elections in Russia may reveal a new course of national development that is not as cooperative as the present Yeltsin Administration.

We urge caution at this time, and urge your support for the OCAW position.

Sincerely,

Elmer Chatak
President

cc: Robert Wages, President, OCAW, AFL-CIO
EC:eb

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NEI

NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel
VICE PRESIDENT,
NUCLEAR ECONOMICS &
FUEL SUPPLY

March 1, 1996

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

SUBJECT: Request for Comments of January 31, 1996 regarding proposed waiver of certain provisions of Title VII of the Tariff Act of 1930, as amended, to importation of certain uranium from the Russian Federation.

Enclosed are the comments of the Nuclear Energy Institute[1] (NEI) on the proposed waiver of certain provisions of Title VII of the Tariff Act of 1930, as amended, as part of the implementation of the United States-Russian Federation Agreement on the Disposition of Uranium from Nuclear Weapons ("the HEU Agreement"). The Administration has requested legislation to waive the applicability of Title VII to the importation of certain uranium from the Russian Federation. In effect, this waiver would give the President authority to waive the tariff on any uranium product derived from Russian highly-enriched uranium (HEU) extracted from Russian nuclear weapons and purchased by the U.S. under the HEU Agreement.

The U.S.-Russian Federation Agreement provides for the purchase by the United States of 500 metric tons of HEU and its conversion to low-enriched uranium (LEU) for nuclear reactor fuel. This Agreement is important for U.S. non-proliferation policy and consistent with the national security interests of the United States. The Nuclear Energy Institute supports the proposed waiver of the applicability of Title VII of the Tariff Act of 1930, as amended, to importation of certain uranium from the Russian Federation if implemented in a manner consistent with the disposition framework contained in Section 12(b) of Senate Amendment 3121 (introduced on January 26, 1996 as substitute language to S. 755). The U.S.- Russian Federation HEU Agreement will enhance the stability and predictability of the international fuel market, making the market more efficient for both fuel sellers and fuel buyers. The introduction of this additional supply into the world market during a period when production falls far short of requirements also enhances the economics of nuclear generation.

We believe that this waiver authority should only be allowed if the Agreement Suspending the Antidumping Investigation on the Uranium from the Russian Federation (Suspension Agreement) is terminated under conditions that could

[1] The Nuclear Energy Institute is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's purpose is to foster and encourage the continued safe utilization and development of nuclear energy to meet the nation's energy, environmental and economic goals. NEI represents over 250 companies and organizations worldwide, including electric utilities that own and operate nuclear power plants, nuclear plant equipment suppliers, engineering/construction firms, nuclear fuel cycle companies, and others in the nuclear energy industry.

result in the imposition of excessive duties on the Russian uranium. In such a situation, tariffs imposed on the uranium derived from the HEU could make it difficult to sell the material and less likely that the terms of the HEU Agreement could be upheld. While a separate suspension agreement could be negotiated to deal effectively with this concern, the authority for the President to make this narrow waiver may be an important backstop to ensure the continued operation of the U.S.-Russian Federation HEU contract.

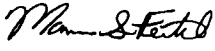
However, the second section of the proposed waiver, which would codify the terms of the Suspension Agreement that was in place 90 days prior to the issuance of a waiver, is both unnecessary and inappropriate. This section, which proposes preserving legislatively the terms of the Suspension Agreement, is unnecessary because the exercise of the waiver itself would ensure the continued viability of the HEU Agreement. If the uranium derived from Russian HEU is protected from tariffs for national security reasons, we see no reason or justification for Congress to legislate regarding other uranium products from the Russian Federation. We strongly prefer reliance on the existing trade law.

It has been argued that the codification of the Suspension Agreement is necessary to maintain support for the Agreement by the Russian Federation. We believe that the Russian Federation has a clear incentive to work within the framework of existing law to maximize its access to the U.S. uranium markets. This is especially true if and when the Russian Federation is recognized for the purposes of U.S. trade law as a market economy.

The administrative nature of the current Suspension Agreement provides flexibility to recognize changes in market conditions in both the United States and in the Russian Federation. However, if Congress were to codify statutorily the Suspension Agreement, that flexibility would be lost. Consequently, we do not support legislation that could result in codification of the terms of the Suspension Agreement.

Thank you for the opportunity to comment. If you have any questions regarding these comments, please do not hesitate to contact me or Cheryl Moss at (202) 739-8124.

Sincerely,



Marvin S. Fertel

OCAW

OIL, CHEMICAL & ATOMIC WORKERS INTL. UNION, AFL-CIO

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February 29, 1996

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Waiver of Dumping Law on the Russian HEU Agreement

Dear Mr. Moseley:

Following are the comments of the Oil, Chemical & Atomic Workers International Union, AFL-CIO, and Local 3-550 at Paducah, Kentucky and Local 3-689 at Piketon, Ohio (OCAW), pursuant to the Committee's request for written comments on miscellaneous trade proposals dated January 31, 1996 designated as TR-17. These comments are in opposition to the proposed amendment by the Administration to waive the applicability of Title VII of the Tariff Act of 1930 (anti-dumping) to the importation of certain uranium from the Russian Federation.

STATEMENT OF FACTS

In order for the Committee to better understand the comments OCAW is submitting for the record it is necessary to give a brief background on under what circumstances the United States is obtaining natural uranium feed and Highly Enriched Uranium (HEU) from Russia.

RUSSIAN URANIUM IMPORTS

The U.S. is importing commercial nuclear fuel from Russia under two different agreements:

1) Suspension Agreement

An anti-dumping case was filed by the uranium producers and OCAW in 1991 against uranium and uranium products from Russia. This case covered both natural uranium used as feed for the enrichment plants, and the enrichment component, SWU, since it covered uranium and uranium products.

This case was suspended as the result of an agreement between the U.S. and Russian governments. That agreement has been amended, but now provides a system requiring matched sales of uranium and SWU. That means that any sale of Russian material must be tied to an equal sale of U.S. material. This suspension agreement expires March 31, 2003.

The SWU sales are limited to 2 million SWU/year in each of two years. Those quotas expire on March 31, 1996. USEC would like to see the existing quotas extended for two more years, since it has not been possible to sell all of the quotas in the first two years.

The Russians recently developed a procedure to get around, or "bypass," the restrictions in the Suspension Agreement. The Russians sold enriched uranium to the European enrichment companies, which they resold to their European customers, thereby freeing up enrichment capacity. The Europeans had no excess enrichment capacity at the time the Suspension Agreement was agreed to, so it was not specifically addressed in the Suspension Agreement, although it was a theoretical problem. The Russians, Uzbeks and Kazakhs then sold natural uranium to U.S. utilities, which the French enriched. The enrichment was purported to be a substantial transformation under the U.S. Customs laws and thus not subject to the Suspension Agreement.

The Commerce Department takes the position that this is still CIS uranium that is required to be sold only under matched sales and is subject to the Suspension Agreement. Several U.S. utilities engaged in these bypass deals even though they had been warned by Commerce that the material would be covered under the Suspension Agreement. The Commerce Department has renegotiated the suspension agreements with Uzbekistan and Kazakhstan to cover the bypass problem, and is

currently negotiating with the Russians to cover the bypass material. The Russians are arguing for additional SWU quotas or that SWU not be covered. OCAW is opposed to any additional SWU quota at this time.

2) Russian HEU Agreement

In February 1993, the two governments agreed that the U.S. Government would buy not less than 500 metric tons of HEU derived from the dismantlement of nuclear weapons by Russia (Russian HEU Agreement). This HEU is to be converted, or blended down into commercial nuclear fuel. The blending is being done in Russia, although not specifically required under the agreement. The HEU could be purchased directly by the U.S. government.

These purchases are to take place over 20 years at the rate of 10 Metric Tons/year for the first five years and 30 M.T./year for the remaining 15 years. These are minimum amounts, and this schedule is partially based on the estimates of time required in the industrial process to convert the HEU into commercial fuel. The actual dismantlement of the weapons is supposed to be done more quickly.

The annual amounts of HEU converted equates to almost 2 million SWU/year for the first five years and almost 6 million SWU/year for the next 15 years. Current U.S. commercial demand is around 12 million SWU/year with the two enrichment plants production of 12 million SWU/year filling virtually all of the demand. The way the Russian HEU Agreement is currently structured, the SWU from converted Russian HEU will directly displace production at the U.S. enrichment plants. Thus, starting in the year 2000, the U.S. nuclear utility industry, and USEC so long as it remains the U.S. Executive Agent, will be receiving half its supply from Russia under this one Agreement, and that equals one enrichment plant's annual production. This does not include any Russian SWU under the Suspension Agreement, any bypass material, and the DOE surplus HEU that will also displace existing production at the enrichment plants.

In a 1994 Environmental Assessment (USEC/EA-94001) required for the Russian HEU Agreement, USEC stated that if the two enrichment plants were forced to operate below 7 million SWU/year, it would be more economical to shut down one of the plants. USEC stated that if it could not increase its market share sufficiently to offset most of the excess supply from the Russian HEU Agreement a shutdown of one plant was almost certain. The U.S. market is not growing and, in fact, is projected to decline. The Europeans have strict controls on what can come into their market. USEC cannot sell in Russia. USEC has some sales in Asia, but it will be difficult for USEC to increase its market share enough to absorb all of the scheduled Russian HEU and maintain efficient production at both plants. If the Russian HEU Agreement proceeds with the import of the volumes scheduled by the two governments, by the year 2000 the U.S. market will be severely disrupted until one of the two U.S. enrichment plants is shut down.

Under the HEU Agreement the U.S. government is required to buy the converted Russian HEU. That responsibility is transferred to USEC as the U.S. Executive Agent. If USEC does not agree to purchase at a price acceptable to the Russians, another executive agent could be appointed in USEC's place. If the U.S. government or its agent is not able to pay for the minimum amount offered at any time, the Russians can sell it to anyone else in the U.S.

USEC has stated that it is critical to its success as a private company to control the amounts of SWU and uranium feed entering the U.S. market from the HEU deal. Otherwise, USEC faces potential loss of market share, revenues and profits. As long as USEC controls the amounts of SWU and uranium under the HEU Agreement, it retains market share and revenues. Profits may be suppressed, but that can be limited by cutting back production at the enrichment plants. USEC states that it is important to have both plants operating and available in order not to be dependent on the Russians for at least half of its annual supplies, and to be able to negotiate a competitive price with the Russians. It is impossible for USEC to purchase six million SWU/year, remain profitable and keep both plants in operation.

ADMINISTRATION'S POSITION

The Administration asserts that the waiver authority is necessary because of national security concerns; i.e., if the Administration does not have the authority to waive the antidumping laws, they might be applied to Russian enriched uranium derived from HEU. The Russian HEU Agreement could thus be threatened at some point in the future. Specifically, the Administration is concerned that OCAW, or others in the U.S. uranium enrichment industry, may try to terminate the Suspension Agreement in the existing dumping case on Russian uranium and uranium products. The Administration asserts that if the Suspension Agreement is terminated by the courts, the dumping case could be reinstated, and the case could then cover the enriched uranium derived from Russian HEU under the Russian HEU Agreement. High duties might then be imposed on those imports, and the Russians might pull out of the 20-year agreement as a result. The potential non-proliferation benefits of the HEU Agreement could then be lost.

OCAW'S RESPONSE

1) There is no real and imminent threat to the Suspension Agreement.

Neither OCAW nor the uranium producers are trying to terminate the Suspension Agreement. There are currently no legal grounds to do so. As yet, the Russian HEU Agreement has caused no adverse effects on prices or production. The Suspension Agreement is currently in the interests of the producers, OCAW and USEC. Why would the domestic industry attack an agreement that is serving its interests? There are a lot of "ifs," "maybes," and "mights" in the Administration's arguments. None of them have occurred, nor are any of them imminent. Deputy Secretary of Energy Charles Curtis has admitted to the staff of the Senate Finance trade subcommittee that there would be no potential problems before 1998 at the earliest, if then. Those problems could be delayed until 2000 based on the way the HEU Agreement is currently drafted. The initial amounts of converted HEU for the first five years of the Agreement can probably be worked into the market without any significant adverse impact on prices or production.

There is no certainty that there will be a threat to the Suspension Agreement even in the year 2000, or after. If the increased sales of converted Russian HEU can be allowed to develop after 2000 in a way that does not glut the U.S. market, threaten to cause the abrupt and premature shut down of one of the U.S. enrichment plants, or make the U.S. totally dependent on the Russians for 50% or more of its enriched uranium fuel supply, the Russian HEU Agreement will not be a threat to the Suspension Agreement. It is up to the two governments who designed this HEU Agreement to make certain that does not happen. Given some flexibility on volumes consistent with commercial requirements and market forces, USEC may be able to manage the converted Russian HEU in a manner that is not disruptive. That is the best hope for the national security objectives to be achieved over the next 20 years. That will provide the greatest certainty to the Russians that there is a market for this material and that they will receive hard currency at market prices for it.

2) Termination of the Suspension Agreement does not necessarily result in reinstatement of the dumping case and high duties on the converted Russian HEU.

If circumstances change and the Suspension Agreement is terminated for any reason, a new suspension agreement can always be negotiated. Suspension agreements are made only between governments. The private sector does not control them, though the government does try to reach agreements in the interest of the domestic industry. That is the case with the current Suspension Agreement. The special provisions of the dumping laws that apply to non-market economies recognize that suspension agreements, including quotas, may be the best solution to these particular cases. There is no need to waive the U.S. trade laws to accomplish something that can be done without taking such extraordinary measures. If the Russians threaten to withdraw from the HEU Agreement, the Administration would have ample time to ask Congress for a waiver. Upon demonstration of the national security interests involved, Congress would probably be inclined to grant it if there were no other alternatives.

In addition, it would do no good to convert the old Suspension Agreement into a statutory provision to prevent Russia from trying to terminate the Suspension Agreement itself and trigger the waiver, as argued by the Administration. That assumes that Russia, in order to guarantee the HEU deal with the waiver, would trade the Suspension Agreement for the HEU Agreement. If that is to be the result, then it is questionable whether the U.S. government should be granting the Russians at least half of the U.S. enriched uranium market, and guaranteeing that the domestic industry, including USEC, cannot attack it under the trade laws. In any event, reinstituting the old Suspension Agreement at that point may be meaningless. The Russians can cease compliance with the suspension agreement at any time. Making it a statute does not make the Russians comply with it. If they will not comply with the statutory agreement, then the dumping case would simply be reinstated on any uranium or uranium products covered by the case, and a final determination made. Another suspension agreement could still be reached, or the Russians could simply abandon any sales under the dumping order. There is no leverage on the Russians to comply so long as the HEU Agreement is exempt and they are willing to settle for half the U.S. market.

3) The Real National Security Issue

The only real and imminent national security threat to the US-Russia HEU Agreement is the instability of the Russian government and the fact that it has not ratified or implemented essential agreements that are necessary elements to the national security objectives cited by the Administration. There is every reason for the U.S. to await the outcome of events.

- First, Russia has not ratified the START II Treaty. That may now depend on the outcome of the Russian Presidential election in June, or the runoff in August. Needless to say, there are uncertainties about the outcome of that process.

- Second, there has been no implementation of the nuclear security and inspection provisions relating to nuclear warhead dismantlement agreed to between Presidents Yeltsin and Clinton last May. Neither has there been an implementation of

the transparency and certification agreements in the HEU Agreement to assure that the HEU comes from dismantled nuclear warheads. The Russian Atomic Energy Minister, Viktor Mikhailov, recently threatened to attack Eastern European countries if they are brought into NATO and tactical nuclear weapons are deployed. (Washington Post, February 15, 1996, "Russian Warns of Attack If NATO Expands East.") This is also the official that is threatening to sell nuclear technology to Iran and is selling HEU to European agencies contrary to U.S. national security interests. This is the individual that we are relying on for implementation of nuclear disarmament and security in Russia and for the full implementation of the HEU Agreement. This is the person that is trying to bypass and impair the current Suspension Agreement. Minister Mikhailov wants half of the U.S. enriched uranium market under the HEU deal and unrestricted SWU sales under the Suspension Agreement. He is apparently willing to sell everything he can get his hands on. He certainly does not act like he wants to terminate any deal to sell uranium. Why should he? The U.S. has the largest unrestricted enriched uranium market in the world. There are no other comparable markets in the world.

- Third, combine these facts with the additional fact that Russia continues to produce highly enriched uranium despite its huge existing inventory. Russia, like the U.S., has more than ample supplies of HEU for its nuclear navy and research reactors for many, many years. If the objective of buying the converted HEU is to get it out of Russian hands to reduce the security risk, then why are we agreeing to let the Russians continue to make HEU in addition to what they take out of warheads? Aren't the security issues the same? The 500 tons of HEU covered under the HEU Agreement is only part of the Russian stockpile. How will the rest be secured?

- Fourth, there is a worldwide Nuclear Security Conference in Moscow in April, less than two months away. All of these issues should be raised and resolved at that time. There is no need now to make a unilateral gesture on the part of the U.S. to waive our trade laws for what is basically a commercial deal for Minister Mikhailov.

We should proceed cautiously for the next few months on issues of nuclear security with the Russians. We can move forward with the USEC privatization, which is also very important to Minister Mikhailov. In fact, it may be a higher priority to him than the waiver issue at the moment. The burden is on the Administration to demonstrate that it needs authority to waive the trade laws and show a real and imminent threat, and it simply has not done so. If anything, all the circumstances argue in favor of the Congress deferring such an action until the Russians have demonstrated the commitment to nuclear security that is a minimum requirement for the HEU Agreement. If there is no waiver, the opportunity remains for the HEU Agreement to be developed in such a way, through annual implementing agreements with USEC, that it will not disrupt the U.S. and world markets and prices. If so, it would not force the closure of one of the enrichment plants, placing USEC at a serious competitive disadvantage. Perhaps even the Russians will come to realize over time that, as a commercial deal, the terms of the HEU Agreement will have to be developed in such a way as to not destroy the commercial nuclear fuel market. If the Russians want to compete as a market-oriented producer for profit, then they also have a stake in not destroying prices through massive oversupplies. If they simply want a U.S. government guarantee of minimum sales volumes and high prices, they will need a waiver of the trade laws and a lot more to make this deal work. They would have to force the U.S. to close an enrichment plant and cut production at least in half to make room for their supplies. Should this be the foreseen outcome, the Europeans should be required to take some of the production cutbacks as well, since they benefit from the nuclear disarmament of the former USSR as much as, if not more so, than the United States.

4) The not so Real National Security Issue

The Administration states in its argument for the waiver, "[t]his material must be resold to nuclear utilities in order to pay Russia in a timely manner". The resale of Russian material to U.S. utilities is not the national security objective. The resale is necessary only because USEC as a private company cannot afford to hold all the converted HEU in inventory. A privatized USEC is part of the deal only because the U.S. Government is not willing to pay any tax dollars to purchase the surplus nuclear fuel to protect U.S. national security.

The basic objective behind the U.S.-Russia HEU Agreement at the time it was being negotiated was to get the bomb grade uranium out of Russia or convert it into something harmless. The second objective was that in order to help provide stability in the states of the former Soviet Union they would need financial assistance. Promoting U.S., and indeed world, national security by getting nuclear warheads dismantled and to pay U.S. dollars for that effort was worth the investment. That decision should not be second guessed, for we believe that it was a good decision. Everyone agrees that the world is better off without nuclear warheads (and delivery vehicles, too). However, this was a government to government transaction and agreement and, as such, should be paid for out of the general revenues of the Treasury (and the Treasuries of our Allies, where possible).

A GOVERNMENT DILEMMA

The problem that has arisen is that the government has tried, we believe unsuccessfully, to make the HEU Agreement a hybrid one by mixing a commercial deal with a government national security responsibility. The original HEU Agreement required the U.S. government to purchase the HEU. Very little, if any, thought was given to the effect on the commercial nuclear fuel market when excessive supplies of SWU were forced into the market on a "must purchase" basis by a government corporation (USEC). The problem is compounded once USEC becomes a private corporation. Under the terms of the HEU Agreement there is no possible way that USEC can purchase the HEU, hold it in inventory for long periods of time and be a successful venture without closing one of the enrichment plants. This is unfair for USEC and certainly unfair for the employees of the two enrichment plants. But USEC must comply because the U.S. government has assigned its national security responsibility to what is soon to be a private company. If USEC refuses, the government simply assigns the deal to someone else.

SOLUTIONS

There are really only two possible solutions to this problem that the government has created: First, the government can purchase the HEU as it has agreed to do, a true national security objective, and hold it in inventory. Thereafter, the government can "resell" it in an orderly manner without causing unnecessary disruptions in the market place. This is a "win-win" deal. The government accomplishes the national security objectives; gets repaid for its purchase; and USEC can become a viable commercial entity, able to compete in the commercial nuclear fuel market. Unfortunately this approach fell victim to the budget cutting process. As a result the employees of the enrichment plants will wind up paying the whole cost to protect U.S. national security. Second, the government can give USEC the authority and flexibility to manage the Agreement in a commercially responsible manner, as the Executive Agent for the government in the HEU deal.

We hope that the Administration will rethink its position on this deal and not force it on a privatized USEC and force the shutdown of one of the U.S. enrichment plants. We would like to think that the Administration would not prefer to put thousands of Americans out of work -- Americans that directly helped to win the cold war, rather than renegotiate an agreement that would be in the best interests of all the parties, the United States, its European allies, Russia, and American workers.

Definition of Terms

"USEC" The United States Enrichment Corporation, a U.S. government corporation that will become a private corporation under the terms of legislation pending in the Congress. Both Houses of Congress have agreed to the language of the pending legislation.

"HEU" Highly Enriched Uranium - Uranium in which the amount of U-235 exceeds 20%. Commercial nuclear fuel averages only 4.5%. Bomb grade uranium is 90%.

"SWU" Separative Work Unit - A measure of the effort required to enrich the U-235 element of natural uranium to a higher specified level. This is, in effect, the usable fuel product of enriched uranium.

Sincerely,

Robert E. Wages
President

COMMENTS OF THE URANIUM PRODUCERS OF AMERICA CONCERNING THE PROPOSED TRADE LAW WAIVER FOR CERTAIN RUSSIAN URANIUM

I. BACKGROUND

The HEU Agreement

The Clinton Administration seeks authority to exempt certain Russian uranium from the reach of U.S. trade laws. The uranium at issue, although derived from weapons, is commercial grade uranium indistinguishable from uranium products produced and sold in the commercial marketplace. This uranium is used in commercial nuclear reactors for the generation of electricity.

The weapons-derived uranium will come to the United States as a result of a U.S.- Russia Agreement ("the HEU Agreement") under which the United States will purchase, over a twenty year period, at least 500 metric tons of highly enriched uranium ("HEU"), the form of uranium used in nuclear weapons. The Russian Federation will "blend down" the HEU, by combining it with natural and less highly enriched uranium, to yield low-enriched uranium ("LEU"), the material used in commercial nuclear reactors. The HEU Agreement has been estimated to be worth about $12 billion to Russia over twenty years.

The HEU Agreement calls for the United States to purchase from the Russian Federation, at a minimum, 10 metric tons of HEU per year for the first five years of the Agreement, and 30 metric tons of HEU per year for the remaining 15 years. Ten metric tons of HEU comprises approximately 8.3 million pounds of natural uranium concentrate or U_3O_8, the product produced by U.S. uranium mining companies. Thirty metric tons of HEU translates into approximately 25 million pounds of U_3O_8. To put these figures in perspective, demand for uranium in the United States during the term of the HEU Agreement will be approximately 45 million pounds U_3O_8 per year.

While it is clear that the commercial market simply cannot absorb all of this uranium as it is purchased, the UPA has worked with the Administration and the Congress to develop a rational plan for the disposition of this uranium in the market in a commercially responsible manner, and in a way which will ensure maximum revenue to the Russian Federation. A plan acceptable to all affected parties has been included in the USEC Privatization bill.1/

The Antidumping Proceeding

In November of 1991, the U.S. uranium industry was forced to file an antidumping petition seeking relief from a flood of unfairly traded uranium from what was then the Soviet Union.2/ Soviet uranium imports had increased by 136.9 percent between 1988 and 1989, and by a further 467.7 percent between 1989 and 1990, and was continuing on that trend in 1991.3/ Soviet imports had driven prices to an all time low. Indeed, Soviet uranium was being sold at prices below the production cost of the

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1/ See USEC Privatization Act, S. 755, 104th Cong., 2d Sess. § 12 (1996).

2/ The antidumping petition was filed when, after many months of meetings and discussions, the industry was unable to convince the Administration to deal with the situation less formally through bilateral negotiations.

3/ See Uranium from the U.S.S.R., USITC Pub. 2471, December, 1991 at 24.

world's most efficient producers. The antidumping proceeding continued after the demise of the U.S.S.R. with respect to uranium from the relevant successor countries.

In October 1992, in order to avoid a situation in which prohibitively high dumping margins prevented any shipments from the former Soviet Republics, the U.S. Department of Commerce signed an agreement with the Russian Ministry of Atomic Energy ("MINATOM"), based upon which the antidumping investigation was suspended.4/ This novel Suspension Agreement (the first concluded under 19 U.S.C. § 1673c(1)), provided Russia with the ability to ship uranium products under "grandfathered" contracts, permitted quantities to be supplied in a special sale to the U.S. Enrichment Corporation and established annual quotas, the size of which were determined by the level of market prices.

The Suspension Agreement also specifically provided that uranium derived from Russian nuclear weapons would be permitted to enter the United States, without regard to the quota restrictions, although limitations were placed upon its market disposition.5/ This provision was carefully fashioned to accommodate the national security imperatives of the U.S.- Russia HEU Agreement, i.e., to allow this uranium to be safely removed from Russia to the United States, while still satisfying the statutory requirements of the antidumping law.

The Suspension Agreement has been amended in key respects since it was accepted in 1992.6/ However, the provisions permitting the quota-free importation of HEU-derived uranium have not changed. The U.S. uranium industry appreciates the importance of the HEU Agreement and was instrumental in designing a Suspension Agreement mechanism to accommodate it.

The Suspension Agreement has been instrumental in restoring stability to the U.S. uranium market. It has done so not only through its regulation of the levels of direct Russian imports, but its coverage of so-called "indirect exports" as well. Thus, the Agreement quotas cover not only Russian uranium which crosses the U.S. border directly, but also apply to uranium which is displaced into the United States as a result of sales of Russian uranium in third countries. Given the commodity nature of the product, this feature of the Suspension Agreement is central to the effectiveness of the quotas and the stability of the market.

The Waiver Request

The Administration has argued that it needs authority to waive the antidumping statute as to the HEU material because, according to the Administration, the antidumping Suspension Agreement could be terminated, the investigation completed and "prohibitive" antidumping duties applied to the HEU-derived uranium. If this happens, the Administration argues, then the HEU-derived uranium cannot be sold in the U.S. market, the Russians will have no source of revenue for this uranium, and they will cease dismantling weapons. Thus, reasons the

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4/ Antidumping: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigation and Amendment of Preliminary Determinations, 57 Fed. Reg. 49220 (Oct. 30, 1992).

5/ Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Russian Suspension Agreement"), Section IV.M, 57 Fed. Reg. 49235, 49237 (Oct. 30, 1992).

6/ Amendment to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 59 Fed. Reg. 15373 (April 1, 1994) (replacing previous price-tied quota with matched sales quota).

Administration, assuring dumping-duty free access to the U.S. commercial market for this uranium is required in the national security. Moreover, according to the Administration, it must be granted this unprecedented authority now to waive the trade laws in the future if their fears should be realized.

For a number of reasons, however, the Administration's analysis is incorrect. The authority it seeks is not only unnecessary, but granting it would be unwise.

II. WAIVER AUTHORITY IS UNNECESSARY

There is no dispute as to the important benefits of the U.S.- Russia HEU Agreement. The antidumping Suspension Agreement permits uranium derived from Russian HEU to enter the United States outside of the quotas established by that Agreement. The USEC Privatization bill authorizes the disposition of that uranium in the United States market. The HEU Agreement has thus been fully accommodated within the purview of existing law.

The Administration's only stated reason for seeking the waiver authority is that "should the Suspension Agreement be terminated for any reason, both the enriched uranium and the natural uranium under the HEU Agreement could be subject to prohibitive duties, halting the transaction."7/ The Administration is concerned that the Agreement may be terminated because it is "subject to challenge".8/ There are a number of very serious flaws in this argument.

First, the Administration is incorrect in assuming that if the Suspension Agreement is terminated, the antidumping investigation would be completed and duties imposed. Even if a suspension agreement is found to be legally insufficient by a court or by the Commerce Department, the Department has the option of substituting a legally viable agreement rather than resuming the investigation. The Commerce Department's regulations make this option clear.9/ Thus, the Administration itself currently has the ability -- within the purview of existing law -- to ensure that the investigation will not be completed and, therefore, that duties will not be imposed. The Administration may replace any agreement found to be inadequate with a legally sound one. The Administration is already in control of the future of the HEU Agreement.

Second, the premise for the Administration's request -- that the Suspension Agreement will be terminated -- is highly speculative. The Russian Federation and the United States are the only parties to the Suspension Agreement. They are the only

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7/ "Presidential Waiver in Interest of National Security," (Administration Position Paper) at 2.

8/ Id.

9/ 19 C.F.R. § 353.19(b)(2)(ii) provides that if a suspension agreement no longer meets statutory requirements, the Department may, at its option, terminate the Agreement or substitute a new one which does meet legal requirements. Current regulations, which were issued prior to the enactment of the non-market economy suspension provision (19 U.S.C. § 1673c(1)) do not, of course, refer to agreements concluded under that section. However, Commerce has uniformly applied all procedural regulations governing suspension agreements to non-market economy agreements. In addition, the proposed revised Department of Commerce antidumping regulations published on February 27, 1996, make clear that the Department's option to replace a legally insufficient agreement with a new, lawful one will continue to apply to suspension agreements under the non-market economy suspension provision. 61 Fed. Reg. 7308, 7362 (1996).

entities which may terminate that Agreement. Presumably, the United States would not do so given the Administration's strong interest in keeping HEU-derived uranium free from antidumping duties. Presumably the Russian Federation will not do so if maintenance of the Agreement is necessary for the functioning of its $12 billion HEU deal.

Of course, interested parties, including petitioners, may challenge the Agreement through various legal mechanisms. However, even a successful challenge should not concern the Administration, as it may simply amend or accept a new Agreement which is legally sound. As discussed above, there is no statutory mandate that the investigation be resumed.

It should be noted that, in any event, the Suspension Agreement is unlikely to be challenged. It includes provisions beneficial to U.S. producers, while at the same time permitting the Russian Federation to ship significant quantities of natural uranium, and all of the uranium purchased by the United States under the HEU Agreement.10/ Moreover, the ability of the Agreement, unlike an antidumping order, to reach "indirect exports" renders a lawful Agreement a preferred alternative for the domestic industry.

Third, it is unnecessary to provide the Administration with broad authority to react to a highly speculative future situation because <u>even if the Administration's unlikely scenario should occur, there will be ample time for Congress and the Administration to consider appropriate action.</u> The UPA does not believe that resumption of the investigation is likely, particularly given the Administration's own ability to prevent that occurrence. However, even if the Agreement were terminated by one government or the other, and no replacement agreement was accepted, the Agreement requires 60 days notice from either party prior to termination. 11/ That period, combined with the normal statutory process for the completion of the antidumping investigation, means that 7 to 9 months would elapse between notification of the termination and the collection of cash deposits.12/

The imposition of cash-deposits, much less final duties, on HEU-derived uranium could not happen overnight. The Administration would have sufficient time to approach Congress and permit <u>Congress</u> to determine whether a waiver is necessary and desirable based on actual facts before it, rather than worst-case, and in our view, unlikely speculation.

Fourth, the authority requested by the Administration is substantially broader than its stated objectives would require. While the Administration argues that it needs to be able to prevent the application of possible duties in the event that the Agreement is terminated, the authority it requests is not limited

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10/ The Administration has made a point to discuss a recent appeal of the Russian Suspension Agreement in the U.S. Court of International Trade. That appeal ultimately involved only an issue concerning the ability of the Department to restrict access to confidential information under an administrative protective order. Petitioners dismissed that action in order to avoid the possibility that the entire Agreement would be declared unlawful as a result of that one objectionable provision. However, even if that had occurred, the Department could simply have replaced the Agreement with a "new" one which eliminated only the legally offensive provision.

11/ <u>Russian Suspension Agreement</u>, Section XII, 57 Fed. Reg. at 49240.

12/ 19 U.S.C. § 1673c(i)(1)(B); 19 U.S.C. § 1673d(a).

to a situation in which the Agreement has been terminated and "prohibitive duties" are imposed. Rather, the Administration's proposal simply permits the President to waive the trade laws based on a determination that the national security requires such a waiver. While waiver authority is entirely unnecessary for reasons described above, such overly broad authority cannot be justified in any event.

U.S. unfair trade laws have never been "waived" as to any commercially traded goods. While the law permits an exemption for certain government imports which have no significant non-military use, U.S. law is available to address any and all unfair trade in commercially traded goods.13/ The Clinton Administration seeks an unprecedented departure from this comprehensive rule of fair trade. Moreover, the authority it seeks is absolutely unnecessary to achieve its stated goals. The Administration has in its own hands the ability to preserve duty-free entry of HEU-derived uranium. UPA respectfully submits that the Committee should reject the Administration's request for extraordinary authority to waive the application of the trade laws to commercially traded goods. It is simply unnecessary and, as discussed below, would be extremely unwise as a matter of policy and as a result of its likely negative impacts upon the industry.

13/ A provision added to U.S. trade law in the Omnibus Trade and Competitiveness Act of 1988 made clear that all commercially traded goods, even government imports, were to be subject to applicable antidumping and countervailing duty orders. 19 U.S.C. § 1677(20). The House Ways & Means Committee explained the provision as follows:

> . . . The Committee feels that <u>any</u> exemption of the payment of antidumping or countervailing duties on imported goods is inconsistent with the Government's policies against unfair trade practices. The Government is obligated to enforce vigorously the unfair trade laws, <u>even as applied to its own activities</u>. H.R. Rep. No. 100-40, 100th Cong., 1st Sess. 42 (1987). (Emphasis added).

The Senate Finance Committee similarly reasoned:

> . . . that an exemption from antidumping or countervailing duties for purchases by the U.S. Government is inconsistent with the U.S. policy of acting against unfair trade practices. The Government is obligated to enforce vigorously the unfair trade laws, even as they apply to its own activities. . . . [t]he U.S. policy is that, if a product is freely traded and available on a commercial basis, the U.S. Government shall be treated like any other U.S. importer of that product. S. Rep. No. 100-71, 100th Cong., 1st Sess. 121 (1987).

The only exceptions to this rule are for Defense Department imports of merchandise which has "no substantial non-military use", and certain goods which the U.S. was required to exempt from duties under previously concluded Memoranda of Understanding with foreign trading partners. While Congress expressed its reluctance to even exempt these goods, it did so only to ensure that preexisting international obligations of the United States would not be abrogated. S. Rep. No. 100-71 at 121; H.R. Rep. No. 100-40 at 142. The House Ways and Means Committee indicated its expectation that the State Department would renegotiate any international agreements which were inconsistent with the amended provision.

III. GRANTING WAIVER AUTHORITY WOULD HAVE SERIOUS NEGATIVE IMPACTS NOT MEANINGFULLY ADDRESSED BY THE SUSPENSION AGREEMENT PRESERVATION PROVISIONS

The Administration's premise for its "national security" argument can be summarized as follows: The uranium derived from Russian HEU must be sold in and assured access to the U.S. commercial nuclear market so that Russia will receive revenue for this material and therefore have an incentive to continue dismantling weapons. Thus, even though dismantlement of nuclear weapons is the national security interest at stake, the Administration has structured an arrangement which ties Russia's remuneration for its ex-weapons uranium to the U.S. commercial marketplace. While it could be argued that, given the vagaries of any commercial market, this is not the best means for achieving such an important national security goal, it is nevertheless the plan in place. Accordingly, the success of the HEU Agreement will depend upon the strength and stability of the U.S. commercial nuclear fuel market.

The Suspension Agreement in the antidumping case is a key factor in maintaining stability in the market. As noted above, that Agreement, among other things, ensures that "indirect" exports of Russian uranium are covered by the quota limitations. An antidumping order would not reach such indirect imports. Accordingly, the industry is concerned that enactment of waiver authority as to HEU derived material would itself cause Russia to terminate its Suspension Agreement, with resulting negative impact upon the U.S. industry, the market and the operation of the HEU Agreement.

Why would this occur? The antidumping Suspension Agreement controls both direct and indirect Russian uranium exports to the United States. If the HEU-derived materials were removed from the purview of the antidumping proceeding, Russia may have an incentive to terminate the Suspension Agreement. With the huge quantities of HEU-derived feed not subject to any possible antidumping duties, Russia could terminate the Agreement, and despite the issuance of an antidumping order with substantial margins, ship its former HEU without antidumping duties and export --indirectly-- unlimited quantities of non-HEU uranium to the U.S. market free of duties.

This is a serious issue for the industry and the market. The Suspension Agreement (and the pending USEC Privatization Act) have created for the market considerable certainty over the flow of what is an uncertain, but believed to be substantial, quantity of Russian uranium. If the Suspension Agreement is terminated, the results would be unfavorable for both the market and the operation of the HEU Agreement which the Administration has elected to tie to the market. The ability of the Russian Federation to once again move potentially large volumes into the United States, at unfair prices, would negatively affect the stability and strength of the U.S. market.

The Administration proposes to address this problem by having the Suspension Agreement automatically become part of the USEC Privatization Act in the event that the waiver is exercised. However, the effect of this proposal would be to give the Administration complete control over <u>all</u> Russian uranium imports. While the proposed provision would "enact" the Suspension Agreement "in effect, or last in effect" when the waiver is exercised, it would leave the parties, i.e., the U.S. and Russian governments, free to amend or terminate the Agreement as they see fit. The Administration could agree to change -- or terminate -- the Agreement in a manner which provides a more favorable situation for Russia. The provision thus provides no certainty of relief from waiver-induced termination by the Russian Federation.

Moreover, by removing the Suspension Agreement from the antidumping law and transplanting it into the Privatization Act, key elements of the antidumping law, such as judicial review, disappear. The many procedural and substantive protections and requirements of those laws would be removed. Indeed, the separate grant of authority to the Commerce Department to administer the transplanted Agreement indicates that it is a distinct authorization from that provided under the antidumping laws and that its administration of the Agreement would not be considered subject to the detailed requirements of those laws. In the event of a waiver, the U.S. industry would be completely disenfranchised by the Administration's proposal, with no fair trade requirements applicable to the HEU-derived uranium and remaining Russian uranium trade removed from the safety net of requirements of the antidumping law.14/

The proposal to "transplant" the Suspension Agreement in the event of a waiver presents other serious issues. The proposed language would have the Agreement "incorporated by reference into this section and made binding on, and enforceable against, the parties to the Agreement . . . ." The parties to the Agreement are the U.S. and Russian governments. It is extremely doubtful, at best, whether the United States Congress may make the Suspension Agreement "binding" upon the Russian Federation, a foreign sovereign entity.15/ The Suspension Agreement was voluntarily entered into by the Russian Federation, which, by the very terms of the Agreement, maintains the ability to terminate its participation in that arrangement. The notion of Congress unilaterally rendering an agreement "binding" upon a foreign sovereign is simply untenable under basic principles of international law.

The Administration's attempt to respond to the industry's concerns regarding likely termination of the Agreement in the event of a waiver is wholly inadequate. It would not solve the problem created and would only serve to remove all Russian uranium trade from the requirements and limitations of the antidumping laws. It is an approach which creates rather than solves problems.

IV. THE WAIVER AUTHORITY WOULD BE POOR POLICY AND BAD PRECEDENT

The Administration's unnecessary request for waiver authority raises some very important policy issues that have not been and must be fully considered, before all appropriate committees of Congress.

First, the Administration claims that national security considerations require the granting of the waiver. In fact, the argument amounts to a claim that the national security requires a flow of funds to Russia and that these funds must come from the

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14/ It is even unclear what would happen if the Agreement were terminated by the parties after its transplant into the privatization statute. Would the antidumping investigation resume at that point? Presumably not, given the fact that the Suspension Agreement would appear to no longer be a creature of the antidumping statute. The "Preservation of the Terms of the Suspension Agreement" provision thus appears to be a mechanism which would permit the Administration to effectively waive the antidumping law as to all Russian uranium.

15/ While Congress may certainly enact such a provision, it would not be able to enforce it as a matter of international law. Outside of the limited and recognized exceptions, "a state is immune from the exercise by another state of jurisdiction to enforce rules of law." See Restatement (Second) of Foreign Relations § 65 (1965).

commercial marketplace.16/ However, if Congress is to accept this premise as a basis for authorizing waiver of unfair trade laws, the implications are very serious ones. If it is deemed to be in the national security, for example, for the Russian Federation to continue full operation and employment in its industrial sector, would it be appropriate to provide a trade law waiver for Russian steel? The question of precisely what national security interests exist that justify permitting dumped commercial merchandise to be sold in the U.S. market without any possible relief to competing U.S. producers must be fully explored and carefully answered. The Congressional committees with jurisdiction and expertise in the area of international trade laws as well as those with responsibility for national security issues must be engaged in this important debate.

While the UPA does not believe that the present situation justifies or requires the waiver of trade laws, we urge the Committee to ensure that this precedent-setting request be fully evaluated in terms of the broader question of whether and what type of "national security" trade law exception should exist. Merely providing for written comments does not, in our view provide an opportunity to explore this issue. We urge the Committee to hold hearings and ensure full examination of this question.

Second, the Administration is not requesting that Congress waive the application of the trade laws, but is asking for Congress to cede to the Administration the authority to do so. While the UPA submits that there is not and will not be any justification for a waiver as to Russian uranium, a broader issue is presented, i.e., should Congress simply cede to the Executive decisions concerning blanket waivers of U.S. trade laws?

In this case there is no conceivable reason for Congress to surrender to the President its control over unfair trade laws. As discussed above, even if the worst-case (but unlikely) scenario posited by the Administration were to arise, Congress would have ample time to decide whether a trade law waiver was necessary. The UPA respectfully submits that the Committee must decide, before setting any precedent in this regard, whether Congress should, and, if so, under what circumstances relinquish to the Executive branch authority to decide if a broad trade law waiver should be granted. Again, hearings and time for full consideration and debate must be afforded this important policy issue.

Third, UPA submits that permitting waiver authority in this case would be an unnecessary and unprecedented blow to the integrity of U.S. trade laws. U.S. antidumping and countervailing duty laws have always served as reliable and objective tools for U.S. industries to obtain relief from unfair trade. The United States has steadfastly refused to weaken or create exceptions to our trade laws to accommodate even our most important trading partners. The consistent application of our laws, regardless of political or economic relationships with the exporting country, has demonstrated the clear commitment of the United States to free and fair international trade.

16/ If the Russian HEU were being purchased by the U.S. Government and paid for upon delivery with federal funds, the issue of the waiver would never arise. It is only because the Administration intends to "pay" for the uranium it has agreed to purchase by disposing of it in the commercial market that the trade laws come into play. One could argue that if the HEU Agreement is a national security imperative, funds for its operation should be supplied by the national treasury, thereby spreading the national security burden across the U.S. tax base, rather than imposing it, in toto, upon the uranium industry.

We are very concerned that granting this unprecedented authority -- particularly where it is patently unnecessary -- will undermine confidence in our trade laws. This exception will create for the first time an expectation that our trade laws may and will be manipulated or even suspended to satisfy purely political goals. We submit that the Committee should refuse to be party to any such weakening of our laws or U.S. producers' perception of the relatively objective and non-political nature of these laws.

V. CONCLUSION

The UPA urges the Committee, in the strongest terms, to reject the Administration's request for authority to waive the antidumping laws as to commercially traded uranium. The authority is wholly unnecessary and would have serious negative impacts on the U.S. uranium market. Waiver authority would also create unsound policy by establishing a vague "national security" basis for trade law waivers, permitting the Executive Branch, rather than Congress to control such waivers, and by creating an unprecedented departure from a consistent application of our fair trade laws.

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February 28, 1996

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Re: Trade Law Waiver Authority Must Not Be Enacted

Dear Mr. Moseley:

The following comments are made by the Utility Workers Union of America, AFL-CIO, and are in support of the comments made to the Ways and Means Committee by the Oil, Chemical & Atomic Workers International Union, AFL-CIO, in opposition to the proposed amendment by the Administration to waive the applicability of Title VII of the Tariff Act of 1930 (Anti-Dumping), to the importation of certain uranium from the Russian Federation:

The Administration's proposed Presidential authority to waive the application of U.S. trade laws to commercial imports is unprecedented and highly controversial. Congress has never exempted any imports from the unfair trade laws, and must not do so in this case, where a U.S. industry will be devastated, without full consideration of the need for and implications of such an action.

Exemption from the trade laws, or Presidential authority to exempt certain uranium from the trade laws, is not necessary. The uranium anti-dumping suspension agreement and the compromise recently

into the market, together provides a means for this uranium to enter the United States in a controlled manner and free of duties.

The Bush Administration, acting within the confines of U.S. trade law, developed a suspension agreement which accommodates national security interests by ensuring that uranium from Russian weapons can enter the United States. Senators Murkowski and Domenici, also acting consistent with U.S. trade laws, have developed a plan in the Energy Committee for the commercial disposition of this uranium. This plan accommodates the interests of all stakeholders, and works to create a delicate balance of legal and commercial constraints. The Administration's proposed trade law exemption will upset the careful balance achieved through the suspension agreement and Energy Committee compromise, endangering the operation of not only the trade laws, but the weapons dismantlement program as well.

The Administration seeks this provision because it hypothesizes a future situation which would render the commercial products derived from weapons-grade uranium subject to anti-dumping duties. There is no reason for Congress to legislate on a controversial issue when no real problem has been presented and, when, to the contrary, the Energy Committee has developed a plan which minimizes the likelihood of a problem arising.

This unprecedented waiver of trade law will open the door for future compromises on other products and industries affected by U.S. trade laws. Like the Administration's ill-fated attempt to completely exempt Russia from the anti-dumping law, this is another case of the Administration responding to Russian demands, even at the expense of the integrity of our own rule of law.

Sincerely,

John M. Walsh, Jr.
National Secretary-Treasurer

JMW,jr.:etp
opeiu #2, afl-cio
cc: Nolan W. Hancock, Director, OCAW

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COMMERCE, TRADE AND HAZARDOUS MATERIALS
HEALTH AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, DC 20515–1701

March 1, 1996

Mr. Phillip Moseley
Chief of Staff
Committee On Ways & Means
1102 Longworth Building
Washington, D.C. 20515

Dear Mr. Moseley:

I am very concerned about the Administration's attempt to get authority for the President to waive the U.S. antidumping trade laws as they apply to Russian HEU. As the Congressman who represents the workers at the Paducah Gaseous Diffusion Plant, one of two uranium enrichment plants in the U.S., I am very opposed to any action which would jeopardize their future or the future of the plant operation.

I firmly believe the Administration has tried to force a government-negotiated deal on the commercial nuclear fuel industry under the guise that it is important to protect our national security. While I support efforts to dismantle the nuclear warheads and remove the bomb-grade Highly Enriched Uranium out of the former Soviet Union, our national security interests are not enhanced by reselling Russian materials to U.S. utilities.

Simply stated, I do not believe a waiver of the trade laws should be allowed on commercial transactions. Those laws provide the one measure of protection that labor and industry can use to stop unfair trade practices that affect their livelihoods and businesses. If the waiver is granted and our government goes through with its plan as it is currently structured, I believe that one of the enrichment plants will be forced to close. This is totally unacceptable to me, and I urge the Committee to reject the waiver request.

Thank you very much for your consideration of my position.

Sincerely,

Ed Whitfield

Ed Whitfield
Member of Congress

EW:kfl

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